# **EXHIBIT M**



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	) MDL NO. 1456
AVERAGE WHOLESALE PRICE LITIGATION	) CIVIL ACTION: 01-CV-12257-PBS
	) Judge Patti B. Saris
THIS DOCUMENT RELATES TO ALL CASES IN MDL NO. 1456. <sup>1</sup>	Chief Magistrate Judge Marianne B. Bowler
	) )

### CROSS-NOTICE OF DEPOSITION OF DEIRDRE DUZOR

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively, "Abbott") hereby cross-notices the deposition of Deirdre Duzor for purposes of the above-captioned action. This deposition has been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida, Case No. 06-21303-CIV-ASG, and now part of MDL 1456 in the United States District Court for the District of Massachusetts (the "DOJ suit"). A copy of the notice of deposition in the DOJ suit is attached as Exhibit A.

Ms. Duzor's deposition will take place at Jones Day, 51 Louisiana Ave., N.W., Washington, D.C., 20001-2113 on October 30, 2007 beginning at 9:00 a.m. The deposition will take place before a notary public, or any other officer authorized to administer oaths. The deposition will be taken upon cross-examination.

The deposition will be recorded by stenographic and/or sound and visual means.

Arrangements will be made so that counsel may participate by telephone if they wish. The

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: October 12, 2007 /s/ Brian J. Murray

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500 Chicago, IL 60601

Tel: (312) 782-3939 Fax: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1611508v1

2

# **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITION OF DEIRDRE DUZOR to be served upon all counsel of record electronically via LexisNexis, this 12th day of October, 2007.

/s/ Jeremy P. Cole Jeremy P. Cole

# **EXHIBIT A**

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	)	MDL NO. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
	)	
	)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)	
U.S. ex rel. Ven-A-Care of the Florida Keys,	)	Chief Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc., et al.	)	
No. 06-CV-11337-PBS	)	

### NOTICE OF DEPOSITION OF DEIRDRE DUZOR

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Deirdre Duzor.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. on October 30, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: October 10, 2007 /s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Talanhana, (212) 782, 2020

Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF DEIRDRE DUZOR to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 10th day of October, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

# Pending in: IN RE: PHARMACEUTICAL INDUSTRY UNITED STATES DISTRICT COURT AVERAGE WHOLESALE PRICE LITIGATION FOR THE DISTRICT OF MASSACHUSETTS MDL NO. 1456 THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Civil Action No. 06-CV-11337-PBS Abbott Laboratories, Inc., et al. Lead Case No. 01-CV-12257-PBS Judge Patti B. Saris Chief Magistrate Judge Marianne B. Bowler SUBPOENA DUCES TECUM TO: Deirdre Duzor Care of: Ana Maria Martinez, Esq. United States Attorney's Office

99 N.E. 4th Street, 3rd Floor

Miami, Florida 33132

YOU ARE COMMANDED to appear in the United States District Court at the	ne place, date, and time specified below
to testify in the above case.	, , opos
PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME
YOU ARE COMMANDED to appear at the place, date, and time specified bel deposition in the above case.	low to testify at the taking of a
PLACE OF DEPOSITION	DATE AND TIME
Jones Day	
51 Louisiana Avenue, N.W.	October 30, 2007 at 9:00 AM
Washington, D.C. 20001	Getober 30, 2007 at 3.00 AM
YOU ARE COMMANDED to produce and permit inspection and copying of the place, date, and time specified below (list documents or objects):  Please see attached Exhibit A  PLACE	DATE AND TIME
YOU ARE COMMANDED to permit inspection of the following premises at the	
	DATE AND TIME
Any organization not a party to this suit that is subpoensed for the taking of more officers, directors, or managing agents, or other persons who consent to testi each person designated, the matters on which the person will testify. Federal Rule	fy on its behalf, and may set forth, for
ISSUING OFFICER SIGNATURE AND INTLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Attorney for Defendant A bord Laboratories, Inc.	October 10, 2007
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: R. Christopher Cook, Esq., Jones Day, 5 D.C. 20001, (202) 879-3939	51 Louisiana Ave., N.W., Washington,

# (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
    - (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
  - (iv) subjects a person to undue burden.

### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### EXHIBIT A

## **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

# **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data

compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT M-1**

				Page 1
1	UNITED STATES	DIST	RICT COURT	, and the second
2	FOR THE DISTRICT	OF M	ASSACHUSETTS	
3		-		
4	IN RE: PHARMACEUTICAL	)	MDL NO. 1456	
5	INDUSTRY AVERAGE WHOLESALE	)	CIVIL ACTION	
6	PRICE LITIGATION	)	01-CV-12257-PBS	
7	THIS DOCUMENT RELATES TO	)		
8	U.S. ex rel. Ven-a-Care of	)	Judge Patti B. Saris	
9	the Florida Keys, Inc.	)		
10	v.	)	Chief Magistrate	
11	Abbott Laboratories, Inc.,	)	Judge Marianne B.	
12	No. 06-CV-11337-PBS	)	Bowler	
13		-		
14	(cross-captions on	foll	owing pages)	
15				
16		Wash	ington, D.C.	
17		Tues	day, October 30, 2007	
18		9:00	a.m.	
19				
20	Videotaped deposition	of	DEIRDRE DUZOR	
21	Volum	e I		
22				

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
                                                    IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2
        THIRD JUDICIAL DISTRICT AT ANCHORAGE
                                                       COUNTY DEPARTMENT, CHANCERY DIVISION
  STATE OF ALASKA,
                                                 THE PEOPLE OF THE STATE OF )
5
         Plaintiff,
                                                 ILLINOIS,
                  ) Case No.
                                                         Plaintiff.
                                                                 ) Case No. 05 CH 02474
6
7
  ABBOTT LABORATORIES and ) 3AN-06-12297 CI
                                               7
                                                                 )
   DEY, INC.,
                                                 ABBOTT LABORATORIES, et al., )
                                               9
9
         Defendants. )
                                                         Defendants. )
                                               10
10
                                               11
11
12
                                               12
13
         IN THE CIRCUIT COURT OF
                                               13
                                                          COMMONWEALTH OF KENTUCKY
14
         MONTGOMERY COUNTY, ALABAMA
                                                       FRANKLIN CIRCUIT COURT - DIV. II
15 -----
16 STATE OF ALABAMA,
                                               16 COMMONWEALTH OF KENTUCKY,
17 Plaintiff, )
                                               17 Plaintiff, ) Civil Action
18
                  ) Case No. CV-2005-219
                                               18 vs.
                                                                     ) NO. 03-CI-1134
19 ABBOTT LABORATORIES, INC., ) Judge Charles Price
                                               19 ABBOTT LABORATORIES, INC., et al., )
                                               20
                                                  Defendants.
                                               21
21
        Defendants.
22 -----
                                               22
    IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                                               1 IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
2
      STATE OF HAWAII
                                                       FIRST JUDICIAL DISTRICT
  _____
                                                3 -----
                                               4 STATE OF MISSISSIPPI, )
4 STATE OF HAWAII,
         Plaintiff, ) Case No.
5
                                               5
                                                 Plaintiff, )
                   ) 06-1-0720-04 EEH
                                                               ) Civil Action No.
6
                                               7 ABBOTT LABORATORIES, INC., ) G2005-2021
  ABBOTT LABORATORIES, INC., )
                   ) JUDGE EDEN
                                                  Defendants. )
   Defendants. ) ELIZABETH HIFO
10
11
                                               11
                                               12
12
    IN THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
                                              13 STATE OF NEW YORK
13
14
       IDAHO, IN AND FOR THE COUNTY OF ADA
                                               14 SUPREME COURT: COUNTY OF ERIE
15 -----
16 STATE OF IDAHO,
                                               16 COUNTY OF ERIE,
                                               17
                                                   Plaintiff,
     Plaintiff, )
17
                                               18
                ) Case No. CV OC 0701846
                                                                ) Index No. 05-2439
                                               19 ABBOTT LABORATORIES, INC., )
19 ABBOTT LABORATORIES, )
20
   Defendant. )
                                               21
                                                  Defendants. )
21 -----
22
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Page 6
                                                   IN THE COMMONWEALTH COURT OF PENNSYLVANIA
   STATE OF NEW YORK
2
   SUPREME COURT: COUNTY OF OSWEGO
3
                                              3 COMMONWEALTH OF PENNSYLVANIA )
                                              4 by Thomas W. Corbett, Jr. in )
4
   COUNTY OF OSWEGO.
5
                                              5 his capacity as Attorney )
           Plaintiff,
                                              6 General of the Commonwealth )
6
                      ) Index No. 06-0697
                                              7 of Pennsylvania,
7
   ABBOTT LABORATORIES, INC., )
                                                      Plaintiff,
8
   et al..
                                                               )
                                                VS.
                                             9
9
                                                                ) No. 212 M.D. 2004
           Defendants.
                                             10 TAP PHARMACEUTICAL PRODUCTS, )
10
                                             11 INC., et al.,
11
                                             12
                                                      Defendants. )
12
13
   STATE OF NEW YORK
                                             13
                                             14
14
   SUPREME COURT: COUNTY OF SCHENECTADY
15
                                             15
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                                             16
16 COUNTY OF SCHENECTADY,
                                             17
17
          Plaintiff,
18
                      ) Index No. 06-0886
                                             18
19 ABBOTT LABORATORIES, INC., )
                                             19
                                             20
20 et al.,
21
                                             21
           Defendants.
22 -----
                                             22
                                                                                     Page 9
        UNITED STATES DISTRICT COURT FOR THE
                                                       IN THE COURT OF COMMON PLEAS
1
2
           SOUTHERN DISTRICT OF OHIO
                                                         FIFTH JUDICIAL CIRCUIT
                                              3 -----
3
             WESTERN DIVISION
4
                                              4 STATE OF SOUTH CAROLINA, and ) STATE OF
                                              5
                                               HENRY D. McMASTER, in his ) SOUTH CAROLINA
  STATE OF OHIO,
          Plaintiff, ) Civil Action No.
                                               official capacity as Attorney ) COUNTY OF
6
                                              7 General for the State of South ) RICHLAND
7
      vs. ) 1:06-cv-00676-SSB-TSB
                                              8 Carolina,
   DEY, INC., et al.,
8
                                              9
9
      Defendants. )
                                                Plaintiffs,
                                                                  )
                                                  VS.
                                             10
                                                                  ) Civil Action No.
10
11
                                             11 ABBOTT LABORATORIES, INC., ) 2006-CP-40-4394
                                             12
                                                  Defendants.
12
                                             13
13
          STATE OF WISCONSIN CIRCUIT COURT
                                             14
14
          DANE COUNTY
                                             15
15 -----
16 STATE OF WISCONSIN,
                                             16
                                             17
17
          Plaintiff, )
18
                     ) Case No. 04-CV-1709
                                             18
      VS.
                                             19
19 AMGEN INC., et al.,
20
          Defendants.
                                             20
21
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                                             22
22
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	Page 10		Page 12
1		1	APPEARANCES (Cont'd)
2		2	
3		3	On behalf of the U.S. Department of Health and
4	Washington, D.C.	4	Human Services:
5	Tuesday, October 30, 2007	5	BRIAN A. KELLEY, ESQ.
6	9:00 a.m.	6	U.S. Department of Health & Human
7		7	Services
8	Videotaped deposition of DEIRDRE DUZOR, called	8	Office of General Counsel, CMS Division
9	for examination by counsel for Abbott Laboratories	9	330 Independence Avenue, S.W., Room 5345
10	in the above-entitled matter, taken at the law	10	Washington, D.C. 20201
11	offices of Jones Day, 51 Louisiana Avenue, N.W.,	11	(202) 205-8702
12	Washington, D.C. 20001-2113, the proceedings being	12	
13	recorded stenographically by Jonathan Wonnell, a	13	On behalf of the State of Alabama:
14	Registered Professional Court Reporter and Notary	14	ROGER L. BATES, ESQ.
15	Public of the District of Columbia, and transcribed	15	Hand Arendall LLC
16	under his direction.	16	1200 Park Place Tower
17		17	2001 Park Place North
18		18	Birmingham, Alabama 35203
19		19	(205) 324-4400
20		20	rbates@handarendall.com
21		21	Toutes e Harradi erradii.com
22		22	
	Page 11		Page 13
1	APPEARANCES OF COUNSEL	1	APPEARANCES (Cont'd)
2		2	` ,
3	On behalf of the United States of America:	3	On behalf of the State of California:
4	ANA MARIA MARTINEZ, ESQ.	4	RITA HANSCOM, ESQ. (via phone)
5	United States Department of Justice	5	California Attorney General's Office
6	99 N.E. 4th Street	6	Civil Prosecutions Unit
7	Miami, Florida 33132	7	P.O. Box 85266
8	(305) 961-9431	8	110 West A Street, #1100
9	ana.maria.martinez@usdoj.gov	9	San Diego, California 82186
10	and	10	(619) 688-6099
11	JOHN NEAL, ESQ.	11	rita.hanscom@doj.ca.gov
12	U.S. Department of Justice	12	, ,
13	Civil Division	13	On behalf of the State of Florida:
14	P.O. Box 261, Ben Franklin Station	14	MARY S. MILLER, ESQ. (via phone)
15	Washington, D.C. 20044	15	Office of the Attorney General of Florida
16	(202) 305-9300	16	PL-01, The Capitol
17		17	Tallahassee, Florida 32399-1050
18		18	(850) 414-3600
19		19	mary_miller@oag.state.fl.us
20		20	
21		21	
22		22	
1			

_			
	Page 14		Page 16
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2	On behalf of the City of New York and all New	2	
3	York Counties other than Nassau and	3	On behalf of Dey, Inc., Dey, L.P. and Mylan:
4	Orange; the States of Wisconsin,	4	NEIL MERKL, ESQ.
5	Illinois, Kentucky, Idaho, Alaska,	5	Kelley, Drye & Warren LLP
6	Hawaii, South Carolina and Mississippi:	6	101 Park Avenue
7	MICHAEL WINGET-HERNANDEZ, ESQ.	7	New York, New York 10178
8	Winget-Hernandez, LLC	8	(212) 808-7811
9	3112 Windsor Road, Suite 228	9	nmerkl@kelleydrye.com
10	Austin, Texas 78703	10	
11	michael@winget-hernandez.com	11	On behalf of Roxane Laboratories and
12		12	Boehringer Ingelheim:
13	On behalf of Ven-A-Care of the Florida Keys,	13	ERIC GORTNER, ESQ.
14	Inc.:	14	Kirkland & Ellis
15	ROSLYN G. POLLACK, ESQ.	15	200 East Randolph Drive
16	Berger & Montague P.C.	16	Chicago, Illinois 60601
17	1622 Locust Street	17	(312) 861-2285
18	Philadelphia, Pennsylvania 19103-6305	18	egortner@kirkland.com
19	(215) 875-3000	19	
20	rpollack@bm.net	20	
21		21	
22		22	
	Page 15	_	Page 17
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2	On hehalf of Abbatt Laboratories Inc.	2	On habelf of Scharing Playah Corneration
3	On behalf of Abbott Laboratories, Inc.:	3	On behalf of Schering-Plough Corporation,
4	DAVID TORBORG, ESQ.	4	Schering Corporation and Warrick
5	SEAN P. MALONE, ESQ.	5	Pharmaceuticals Corporation:
6 7	Jones Day	6 7	GINGER APPLEBERRY, ESQ. (via phone)
	51 Louisiana Avenue, N.W.		Locke, Liddell & Sapp
8	Washington, D.C. 20001-2113	8	2200 Ross Avenue, Suite 2200
9	(202) 879-3939	9	Dallas, Texas 75201
10	dstorborg@jonesday.com	10	(214) 740-8459
11	spmalone@jonesday.com	11	gappleberry@lockeliddell.com
12	On hohalf of Prical Myore Savibby	12	On hohalf of Paytor Hoalth Care and Paytor
13	On behalf of Brisol-Myers Squibb:	13	On behalf of Baxter Health Care and Baxter
14	EVA L. DIETZ, ESQ. (via phone)	14	International:
15	Hogan & Hartson 875 Third Avenue	15	JARED D. RODRIGUES, ESQ. (via phone)
16		16	Dickstein Shapiro LLP
17	New York, New York 10022	17	1825 Eye Street, N.W.
18	eldietz@hhlaw.com	18	Washington, D.C. 20006
19	(212) 918-3542	19	(202) 420-2571
20		20	hearde@dicksteinshapiro.com
21		21	
22		22	

		Page 18		Page 20
1	APPEARANCES (Cont'd)	. 3.	1	INDEX OF EXHIBITS (Cont'd)
2	ALSO PRESENT:		2	NO. DESCRIPTION PAGE
3	CONWAY BARKER, Videographer		3	Exhibit Abbott 380, HHD086-0016 to 0019 242
4	27 <u>27</u> 7aoog.apa.		4	Exhibit Abbott 381, Report by ADT Associates 243
5			5	dated 8/30/04 entitled Medicaid and
6			6	Medicare Drug Pricing Strategy to
7			7	Determine Market Prices (No Bates refs)
8			8	20100
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-				
		Page 19		Page 21
- 4	INDEX OF EXAMINATIONS			=
1			1	PROCEEDINGS
2	WITNESS NAME PAGE		2	(8:58 a.m.)
	WITNESS NAME PAGE DEIRDRE DUZOR		2	(8:58 a.m.) (Exhibit Abbott 367 was
2 3 4	WITNESS NAME PAGE		2 3 4	(8:58 a.m.) (Exhibit Abbott 367 was marked for
2 3 4 5	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26		2	(8:58 a.m.) (Exhibit Abbott 367 was marked for identification.)
2 3 4 5 6	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS		2 3 4 5 6	(8:58 a.m.) (Exhibit Abbott 367 was marked for identification.) THE VIDEOGRAPHER: In the United States
2 3 4 5 6 7	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE		2 3 4 5 6 7	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In
2 3 4 5 6 7 8	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (I		2 3 4 5 6 7 8	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price
2 3 4 5 6 7 8 9	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Index page)	No 21	2 3 4 5 6 7 8 9	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of
2 3 4 5 6 7 8 9	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (In Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015	: No 21 113	2 3 4 5 6 7 8 9	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott
2 3 4 5 6 7 8 9 10	WITNESS NAME PAGE DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (I Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015 Exhibit Abbott 369, HHD068-0403 1	No 21 113 126	2 3 4 5 6 7 8 9 10 11	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States  District Court for the District of Massachusetts In  Re: Pharmaceutical Industry Average Wholesale Price  Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott  Laboratories Incorporated et al., Case Number
2 3 4 5 6 7 8 9 10 11 12	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute of the Deirdre Duzor) Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015 Exhibit Abbott 369, HHD068-0403 1 Exhibit Abbott 370, HHC004-0222 1	: No 21 113 126 159	2 3 4 5 6 7 8 9 10 11	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States  District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross
2 3 4 5 6 7 8 9 10 11 12 13	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute of the Description of Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015 Exhibit Abbott 369, HHD068-0403 1 Exhibit Abbott 370, HHC004-0222 1 Exhibit Abbott 371, HHD086-0001 1	No 21 113 126 159 168	2 3 4 5 6 7 8 9 10 11 12 13	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States  District Court for the District of Massachusetts In  Re: Pharmaceutical Industry Average Wholesale Price  Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott  Laboratories Incorporated et al., Case Number  06-CV-11337 PBS and other cases that are cross noticed.
2 3 4 5 6 7 8 9 10 11 12 13	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (In Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015 Exhibit Abbott 369, HHD068-0403 1 Exhibit Abbott 370, HHC004-0222 1 Exhibit Abbott 371, HHD086-0001 1 Exhibit Abbott 372, Rehnquist letter to Scully 1	: No 21 113 126 159	2 3 4 5 6 7 8 9 10 11 12 13 14	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute of the property o	: No 21 113 126 159 168 174	2 3 4 5 6 7 8 9 10 11 12 13 14 15	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States  District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor.  Today's date is October 30th 2007. The location of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute of the property of the part of the property of the part o	No 21 113 126 159 168 174	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor. Today's date is October 30th 2007. The location of the deposition is Jones Day, 51 Louisiana Avenue,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute of Bates refs) Exhibit Abbott 368, HHD086-0013 to 0015 Exhibit Abbott 369, HHD068-0403 1 Exhibit Abbott 370, HHC004-0222 1 Exhibit Abbott 371, HHD086-0001 1 Exhibit Abbott 372, Rehnquist letter to Scully 1 Stamped 9/12/02 (No Bates refs) Exhibit Abbott 373, HHC009-0976 2 Exhibit Abbott 374, HHC009-1199 to 1202	113 126 159 168 174 209 214	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor. Today's date is October 30th 2007. The location of the deposition is Jones Day, 51 Louisiana Avenue, Northwest, Washington, D.C. Will counsel please
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute o	113 126 159 168 174 209 214 214	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor. Today's date is October 30th 2007. The location of the deposition is Jones Day, 51 Louisiana Avenue, Northwest, Washington, D.C. Will counsel please identify yourselves and state whom you represent?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Indicated by the page of the pa	No 21  113 126 159 168 174 209 214 214 215 224	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor. Today's date is October 30th 2007. The location of the deposition is Jones Day, 51 Louisiana Avenue, Northwest, Washington, D.C. Will counsel please identify yourselves and state whom you represent?  MR. TORBORG: David Torborg and also with me today is Sean Malone, though he has left the room
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	WITNESS NAME DEIRDRE DUZOR By Mr. Torborg: 26  INDEX OF EXHIBITS NO. DESCRIPTION PAGE Exhibit Abbott 367, Resume of Deirdre Duzor (Institute o	No 21 113 126 159 168 174 209 214 214	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	(8:58 a.m.)  (Exhibit Abbott 367 was marked for identification.)  THE VIDEOGRAPHER: In the United States District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price Litigation, this document relates to Ven-A-Care of the Florida Keys Incorporated versus Abbott Laboratories Incorporated et al., Case Number 06-CV-11337 PBS and other cases that are cross noticed.  This is the deposition of Deirdra Duzor. Today's date is October 30th 2007. The location of the deposition is Jones Day, 51 Louisiana Avenue, Northwest, Washington, D.C. Will counsel please identify yourselves and state whom you represent?  MR. TORBORG: David Torborg and also with

# **EXHIBIT N**



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	) MDL NO. 1456
AVERAGE WHOLESALE PRICE LITIGATION	) CIVIL ACTION: 01-CV-12257-PBS
	) Judge Patti B. Saris
THIS DOCUMENT RELATES TO ALL CASES IN MDL NO. 1456. <sup>1</sup>	Chief Magistrate Judge Marianne B. Bowler
	<i>)</i> )

### **CROSS-NOTICE OF DEPOSITION OF SUE GASTON**

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively, "Abbott") hereby cross-notices the deposition of Sue Gaston for purposes of the above-captioned action. This deposition has been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida, Case No. 06-21303-CIV-ASG, and now part of MDL 1456 in the United States District Court for the District of Massachusetts (the "DOJ suit"). A copy of the notice of deposition in the DOJ suit is attached as Exhibit A.

Ms. Gaston's deposition will take place at Jones Day, 51 Louisiana Avenue, Washington, D.C., on January 24, 2008 beginning at 9:00 a.m. The deposition will take place before a notary public, or any other officer authorized to administer oaths. The deposition will be taken upon cross-examination.

The deposition will be recorded by stenographic and/or sound and visual means.

Arrangements will be made so that counsel may participate by telephone if they wish. The

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: January 15, 2008 /s/ Brian J. Murray

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, IL 60601 Tel: (312) 782-3939 Fax: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1627372v1

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# **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITION OF SUE GASTON to be served upon all counsel of record electronically via LexisNexis, this 15th day of January, 2008.

/s/ Jeremy P. Cole Jeremy P. Cole

# **EXHIBIT A**

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	)	MDL NO. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
	)	
	)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)	
U.S. ex rel. Ven-A-Care of the Florida Keys,	)	Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc., et al.	)	
No. 06-CV-11337-PBS	)	

### NOTICE OF DEPOSITION OF SUE GASTON

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Sue Gaston.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Avenue, Washington, D.C., on January 24, 2008 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: January 14, 2008 /s/ David S. Torborg

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601

Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook
David S. Torborg
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF SUE GASTON to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 14th day of January, 2008.

/s/ David S. Torborg
David S. Torborg

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	Pending in:
IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
	MDL NO. 1456
THIS DOCUMENT RELATES TO  U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v.  Abbott Laboratories, Inc., et al.	Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257-PBS
	Judge Patti B. Saris
	Magistrate Judge Marianne B. Bowler
	SUBPOENA DUCES TECUM
TO: Sue Gaston c/o Ana Maria Martinez, Esq. United States Attorney's Office 99 N.E. 4th Street, 3rd Floor Miami, Florida 33132  YOU ARE COMMANDED to appear in the United State to testify in the above case.  PLACE OF TESTIMONY  YOU ARE COMMANDED to appear at the place, date, a deposition in the above case.  PLACE OF DEPOSITION Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001	COURTROOM DATE AND TIME and time specified below to testify at the taking of a  DATE AND TIME January 24, 2008 at 9:00 AM
YOU ARE COMMANDED to produce and permit inspect place, date, and time specified below (list documents or object Please see attached Exhibit A	ion and copying of the following documents or objects at the ets):
PLACE	DATE AND TIME
YOU ARE COMMANDED to permit inspection of the following	llowing premises at the date and time specified below.
PREMISES	DATE AND TIME
Any organization not a party to this suit that is subpoen more officers, directors, or managing agents, or other person each person designated, the matters on which the person wil	aed for the taking of a deposition shall designate one or s who consent to testify on its behalf, and may set forth, for ll testify. Federal Rules of Civil Procedure, 30(b)(6).
Attorney for Defendant Abbott Laboratories, Inc.	January 14, 2008
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Torbe	org, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington, D.C.

20001, (202) 879-3939

#### (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and/or copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and/or copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises ·· or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and/or copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, and/or copying. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and/or copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

#### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### **EXHIBIT A**

## **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc. (Ven-A-Care), Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all documents in your personal possession concerning communications with the Department of Justice ("DOJ"), CMS, or Ven-A-Care regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any document or documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to, advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms,

interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegrams, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT N-1**

Gaston, Sue January 24, 2008
Washington, DC

1	UNITED STATES DISTRICT COURT	Page 1	
2	FOR THE DISTRICT OF MASSACHUSETTS		
3			
4	IN RE: PHARMACEUTICAL ) MDL NO. 1456		
5	INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION		
6	PRICE LITIGATION ) 01-CV-12257-PBS		
7	THIS DOCUMENT RELATES TO )		
8	U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris		
9	the Florida Keys, Inc. )		
10	v. ) Chief Magistrate		
11	Abbott Laboratories, Inc., ) Judge Marianne B.		
12	No. 06-CV-11337-PBS ) Bowler		
13			
14	(cross captions appear on following pages)		
15			
16			
17	Videotaped deposition of SUE GASTON		
18			
19			
20	Washington, D.C.		
21	Thursday, January 24, 2008		
22	9:00 a.m.		

Gaston, Sue January 24, 2008 Washington, DC

Page 2 1 UNITED STATES DISTRICT COURT IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS 2 FOR THE DISTRICT OF MASSACHUSETTS COUNTY DEPARTMENT, CHANCERY DIVISION IN RE: PHARMACEUTICAL ) MDL NO. 1456 4 THE PEOPLE OF THE STATE OF ) INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION ILLINOIS. PRICE LITIGATION ) 01-CV-12257-PBS Plaintiff. ) Case No. 05 CH 02474 7 7 ) Judge Patti B. Saris VS. ) THIS DOCUMENT RELATES TO ) Chief Magistrate ABBOTT LABORATORIES, et al., ) ALL CASES IN MDL NO. 1456 ) Judge Marianne B. 9 Defendants. 10 ----- Bowler 10 11 11 12 12 13 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA 13 COMMONWEALTH OF KENTUCKY 14 THIRD JUDICIAL DISTRICT AT ANCHORAGE 14 FRANKLIN CIRCUIT COURT - DIV. I 15 ------16 STATE OF ALASKA, 16 COMMONWEALTH OF KENTUCKY, ex rel. ) 17 Plaintiff, 17 GREGORY D. STUMBO, ATTORNEY GENERAL) 18 ) Case No. 18 Plaintiff. ) Civil Action VS. 19 ALPHARMA BRANDED PRODUCTS ) 3AN-06-12026 CI 19 ) NO. 04-CI-1487 VS. DIVISION, INC., et al. ) 20 ALPHARMA USPD, INC., et al., 21 21 Defendants. Defendants. Page 3 Page 5 1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT COMMONWEALTH OF KENTUCKY 1 2 STATE OF HAWAII FRANKLIN CIRCUIT COURT - DIV. II STATE OF HAWAII, 4 COMMONWEALTH OF KENTUCKY. 5 Plaintiff, ) Case No. 5 Plaintiff, ) Civil Action ) 06-1-0720-04 EEH ) NO. 03-CI-1134 6 6 VS. ABBOTT LABORATORIES, INC., ) 7 ABBOTT LABORATORIES, INC., ) JUDGE EDEN 8 Defendants. Defendants. ) ELIZABETH HIFO 10 10 11 11 COMMONWEALTH OF KENTUCKY 12 12 FRANKLIN CIRCUIT COURT - DIV. II IN THE FOURTH JUDICIAL DISTRICT OF THE STATE OF 13 13 ------14 IDAHO, IN AND FOR THE COUNTY OF ADA 14 COMMONWEALTH OF KENTUCKY, ex rel. ) 15 -----15 GREGORY D. STUMBO, ATTORNEY GENERAL) 16 STATE OF IDAHO, 16 Plaintiff. ) Civil Action 17 Plaintiff, ) NO. 03-CI-1135 17 ) Case No. 18 WARRICK PHARMACEUTICALS CORP., ) 19 ALPHARMA USPD, INC., et al., ) CV 0C 0701847 19 et al. 20 Defendant. ) 20 Defendants. 21 -----21 22 22

2 (Pages 2 to 5)

Gaston, Sue January 24, 2008

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Washington, DC
                                             Page 6
                                                                                                Page 8
                                                          APPEARANCES OF COUNSEL
 1
    STATE OF NEW YORK
                                                    1
 2
                                                    2
    SUPREME COURT: COUNTY OF ERIE
 3
                                                    3
                                                        On behalf of the United States of America:
 4
                                                    4
    COUNTY OF ERIE,
5
            Plaintiff,
                                                    5
                                                               ANA MARIA MARTINEZ, ESQ.
6
                         ) Index No. 05-2439
                                                    6
                                                               United States Department of Justice
       VS.
7
    ABBOTT LABORATORIES, INC.,
                                                    7
                                                               99 N.E. 4th Street
8
    et al.,
                                                    8
                                                               Miami, Florida 33132
9
                                                    9
                                                               (305) 961-9431
            Defendants.
10
                                                   10
                                                               ana.maria.martinez@usdoj.gov
11
                                                   11
                                                        On behalf of the U.S. Department of Health and
12
                                                   12
13
           STATE OF WISCONSIN CIRCUIT COURT
                                                   13
                                                        Human Services:
14
                                                   14
               DANE COUNTY Branch 9
    -----
15
                                                   15
                                                               LESLIE M. STAFFORD, ESQ.
    STATE OF WISCONSIN,
16
                                                   16
                                                               U.S. Department of Health & Human
17
                                                   17
                                                                Services
            Plaintiff.
18
                         ) Case No. 04-CV-1709
                                                   18
                                                               Office of General Counsel, CMS Division
       VS.
    AMGEN INC., et al.,
                                                   19
                                                               7500 Security Boulevard
19
20
                                                               Mail Stop C2-05-23
            Defendants.
                                                   20
21
                                                   21
                                                               Baltimore, Maryland 21244
22
                                                   22
                                                               (410) 786-9655
                                             Page 7
                                                                                                Page 9
1
           UNITED STATES DISTRICT COURT
                                                    1
                                                              APPEARANCES (Cont'd)
2
          FOR THE DISTRICT OF MASSACHUSETTS
                                                    2
    -----
                                                    3
3
                                                        On behalf of the State of Alabama:
4
  IN RE: PHARMACEUTICAL ) MDL NO. 1456
                                                    4
                                                    5
5
   INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION
                                                               SCARLETTE M. TULEY, ESQ. (via phone)
    PRICE LITIGATION
                           ) 01-CV-12257-PBS
                                                               Beasley, Allen, Crow, Methvin, Portis &
                                                    6
                                                                Miles, P.C.
   THIS DOCUMENT RELATES TO )
                                                    7
   U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris
                                                    8
                                                               218 Commerce Street
    the Florida Keys, Inc., et al)
                                                    9
                                                               Montgomery, Alabama 36104
10
       ٧.
                     ) Chief Magistrate
                                                               (800) 898-2034
                                                   10
11 Boehringer Ingelheim ) Judge Marianne B.
                                                   11
                                                               scarlette.tuley@beasleyallen.com
    Corporation, et al.,
                         ) Bowler
12
                                                   12
    No. 07-CV-10248-PBS
13
                                                   13
                                                        On behalf of the State of Florida:
14 -----
                                                   14
15
                                                               MARY S. MILLER, ESQ. (via phone)
                                                   15
16
       Videotaped deposition of SUE GASTON, held at
                                                   16
                                                               Office of the Attorney General of Florida
17 the law offices of Jones Day, 51 Louisiana Avenue,
                                                               PL-01, The Capitol
                                                   17
18 N.W., Washington, D.C. 20001-2113, the proceedings
                                                   18
                                                               Tallahassee, Florida 32399-1050
   being recorded stenographically by Jonathan Wonnell,
19
                                                   19
                                                               (850) 414-3600
20 a Registered Professional Court Reporter and Notary
                                                   20
                                                               mary_miller@oag.state.fl.us
21 Public of the District of Columbia, and transcribed
                                                   21
22 under his direction.
                                                   22
                                                       (Cont'd)
```

Gaston, Sue January 24, 2008

_			
	Page 10		Page 12
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2		2	
3	On behalf of the City of New York and all New	3	On behalf of Bristol-Myers Squibb:
4	York Counties other than Nassau and	4	
5	Orange; the States of Wisconsin,	5	DIANNE M. PETERSON, ESQ. (via phone)
6	Illinois, Kentucky, Idaho, Alaska and	6	Hogan & Hartson
7	Hawaii:	7	875 Third Avenue
8		8	New York, New York 10022
9	MICHAEL WINGET-HERNANDEZ, ESQ.	9	(212) 918-3000
10	Winget-Hernandez, LLC	10	dmpeterson@hhlaw.com
11	3112 Windsor Road, Suite 228	11	•
12	Austin, Texas 78703	12	On behalf of Dey, Inc., Dey, L.P. and Mylan:
13	michael@winget-hernandez.com	13	<i>3.</i> . <i>3.</i>
14	3	14	SARAH L. REID, ESQ.
15	On behalf of Ven-A-Care of the Florida Keys, Inc.:	15	Kelley, Drye & Warren LLP
16	3	16	101 Park Avenue
17	MARJORY P. ALBEE, ESQ.	17	New York, New York 10178
18	Mager & Goldstein LLP	18	(212) 808-7720
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20	Philadelphia, Pennsylvania 19103	20	
21	(215) 640-3280	21	
22	malbee@magergoldstein.com	22	(Cont'd)
			(55.11.2)
	Page 11		Page 13
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2	On behalf of Abbott Laboratories, Inc.:	2	,
3	·	3	On behalf of Roxane Laboratories and
4	DAVID TORBORG, ESQ.	4	Boehringer Ingelheim:
5	SEAN P. MALONE, ESQ.	5	3 3
6	Jones Day	6	ERIC GORTNER, ESQ.
7	51 Louisiana Avenue, N.W.	7	Kirkland & Ellis
8	Washington, D.C. 20001-2113	8	200 East Randolph Drive
9	(202) 879-3939	9	Chicago, Illinois 60601
10	dstorborg@jonesday.com	10	(312) 861-2285
11	spmalone@jonesday.com	11	egortner@kirkland.com
12	, , , , , , , , ,	12	<b>5</b>
13	On behalf of Aventis Pharmaceuticals and	13	On behalf of Sandoz, Inc.:
14	Sanofi Synthelabo:	14	, in the second of the second
15	,	15	DAVID L. KLEINMAN, ESQ. (via phone)
16	JENNIFER H. MCGEE, ESQ.	16	White & Case LLP
17	Shook, Hardy & Bacon, LLP	17	1155 Avenue of the Americas
18	600 Fourteenth Street, N.W.	18	New York, New York 10036-2787
19	Suite 800	19	(212) 819-2567
20	Washington, D.C. 20005-2004	20	dkleinman@whitecase.com
21	(202) 783-8400	21	
	jmcgee@shb.com	22	
22	Introduce 311b.com	~~	

Gaston, Sue January 24, 2008

# Washington, DC

	Page 14		Page 16
1	APPEARANCES (Cont'd)	1	CONTENTS
2	M 1 2 M M 1 2 2 Commay	2	WITNESS NAME PAGE
3	On behalf of Schering-Plough Corporation,	3	SUE GASTON
4	Schering Corporation and Warrick	4	Examination By Mr. Torborg 022
5	Pharmaceuticals Corporation:	5	, ,
6	The management of potentials	6	
7	JOHN P. BUEKER, ESQ.	7	EXHIBITS
8	Ropes & Gray	8	NUMBER DESCRIPTION PAGE
9	One International Place	9	Exhibit Abbott 453, VAC MDL 86162 THROUGH 86175 097
10	Boston, Massachusetts 02110-2624	10	Exhibit Abbott 454, VAC MDL 64417 through 64427 139
11	(617) 951-7050	11	Exhibit Abbott 455, HHD 101-1266 through 1285 146
12	john.bueker@ropesgray.com	12	Exhibit Abbott 456, HHD 042-0164 151
13	, , , , , , , , , , , , , , , , , , , ,	13	Exhibit Abbott 457, HHC 008-0083 167
14	and	14	Exhibit Abbott 458, OIG report entitled Cost of
15		15	Dialysis Related Drugs
16	GINGER APPLEBERRY, ESQ. (via phone)	16	(no Bates refs) 187
17	Locke, Lord, Bissell & Liddell	17	Exhibit Abbott 459, VAC MDL 45005 through 31 206
18	2200 Ross Avenue, Suite 2200	18	Exhibit Abbott 460, HCFA Review article
19	Dallas, Texas 75201	19	entitled "State Medicaid
20	(214) 740-8459	20	Pharmacy Payments and Their
21	gappleberry@lockeliddell.com	21	Relation to Estimated Costs"
22		22	(no Bates refs) 206
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1	APPEARANCES (Cont'd)	1	INDEX OF EXHIBITS (Cont'd)
2	ATTEMANOES (doined)	2	NUMBER DESCRIPTION PAGE
3	On behalf of Endo Pharmaceuticals:	3	Exhibit Abbott 461, HHC 992-0856 through 0858 222
4	on behalf of Endo Fharmaceancais.	4	Exhibit Abbott 462, HHC 902-0446
5	VICTOR RORTVEDT, ESQ.	5	Exhibit Abbott 463, Section 4401 of the Omnibus
6	Arnold & Porter	6	Budget Reconciliation Act
7	555 Twelfth Street, N.W.	7	of 1990 (no Bates refs) 263
8	Washington, D.C. 20004	8	Exhibit Abbott 464, NYSHD-FOIL 01682 through
9	(202) 942-5000	9	01683 271
10	,	10	Exhibit Abbott 465, HHC 004-0054 276
11	On behalf of Ethex Corporation:	11	Exhibit Abbott 466, HHD 006-0103 through 0108 279
12	·	12	Exhibit Abbott 467, US' Second Sepplemental
13	CLARA VONDRICH, ESQ.	13	Response to Defendant
14	Arnold & Porter	14	Abbott's Fourth Set of
15	555 Twelfth Street, N.W.	15	Interrogatories
16	Washington, D.C. 20004	16	(no Bates refs) 284
17	(202) 942-5000	17	
18		18	
19		19	
20	ALSO PRESENT:	20	
21	EMILY WATSON, legal assistant	21	
22	CONWAY BARKER, videographer	22	

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1		Page 287
1	UNITED STATES DISTRICT COURT	
2	FOR THE DISTRICT OF MASSACHUSETTS	
3		
4	IN RE: PHARMACEUTICAL ) MDL NO. 1456	
5	INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION	
6	PRICE LITIGATION ) 01-CV-12257-PBS	
7	THIS DOCUMENT RELATES TO )	
8	U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris	
9	the Florida Keys, Inc. )	
10	v. ) Chief Magistrate	
11	Abbott Laboratories, Inc., ) Judge Marianne B.	
12	No. 06-CV-11337-PBS ) Bowler	
13		
14	(cross captions appear on following pages)	
15		
16	Videotaped deposition of SUE GASTON	
17		
18	Volume II	
19		
20	Washington, D.C.	
21	Wednesday, March 19, 2008	
22	9:00 a.m.	

#### Washington, DC

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Page 288
1
          UNITED STATES DISTRICT COURT
                                                    IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2
        FOR THE DISTRICT OF MASSACHUSETTS
                                                       COUNTY DEPARTMENT, CHANCERY DIVISION
  IN RE: PHARMACEUTICAL ) MDL NO. 1456
                                                4 THE PEOPLE OF THE STATE OF )
  INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION
                                               5 ILLINOIS.
  PRICE LITIGATION ) 01-CV-12257-PBS
                                                         Plaintiff.
                                                                  ) Case No. 05 CH 02474
                                               7
7
                  ) Judge Patti B. Saris
                                                    VS.
                                                                  )
  THIS DOCUMENT RELATES TO ) Chief Magistrate
                                                 ABBOTT LABORATORIES, et al., )
   ALL CASES IN MDL NO. 1456 ) Judge Marianne B.
                                               9
                                                         Defendants.
10
  ----- Bowler
                                               10
11
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12
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13
     IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
                                               13
                                                          COMMONWEALTH OF KENTUCKY
14
        THIRD JUDICIAL DISTRICT AT ANCHORAGE
                                               14
                                                       FRANKLIN CIRCUIT COURT - DIV. I
                                               15 ------
16 STATE OF ALASKA,
                                               16 COMMONWEALTH OF KENTUCKY, ex rel. )
17 Plaintiff,
                                               17 GREGORY D. STUMBO, ATTORNEY GENERAL)
18
                   ) Case No.
                                               18
                                                         Plaintiff,
                                                                    ) Civil Action
    VS.
19 ALPHARMA BRANDED PRODUCTS ) 3AN-06-12026 CI
                                               19
                                                                     ) NO. 04-CI-1487
                                                     VS.
20 DIVISION, INC., et al. )
                                               20 ALPHARMA USPD, INC., et al.,
                                               21
21
         Defendants.
                                                        Defendants.
                                        Page 289
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1
    IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                                                            COMMONWEALTH OF KENTUCKY
                                                1
2
             STATE OF HAWAII
                                                          FRANKLIN CIRCUIT COURT - DIV. II
  -----
  STATE OF HAWAII,
                                                4 COMMONWEALTH OF KENTUCKY.
5
         Plaintiff, ) Case No.
                                                5
                                                          Plaintiff, ) Civil Action
                   ) 06-1-0720-04 EEH
                                                                         ) NO. 03-CI-1134
6
                                                6
                                                      VS.
  ABBOTT LABORATORIES, INC., )
                                                7 ABBOTT LABORATORIES, INC.,
                   ) JUDGE EDEN
                                                8
                                                          Defendants.
         Defendants. ) ELIZABETH HIFO
10
                                               10
11
                                               11
                                                            COMMONWEALTH OF KENTUCKY
12
                                               12
                                                          FRANKLIN CIRCUIT COURT - DIV. II
    IN THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
13
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       IDAHO, IN AND FOR THE COUNTY OF ADA
                                               14 COMMONWEALTH OF KENTUCKY, ex rel. )
15 -----
                                               15 GREGORY D. STUMBO, ATTORNEY GENERAL)
16 STATE OF IDAHO,
                                               16
                                                          Plaintiff.
                                                                        ) Civil Action
17
     Plaintiff,
                                                                         ) NO. 03-CI-1135
                                               17
                  ) Case No.
                                               18 WARRICK PHARMACEUTICALS CORP., )
19 ALPHARMA USPD, INC., et al., ) CV 0C 0701847
                                               19 et al.
20
  Defendant. )
                                               20
                                                          Defendants.
21 -----
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Page 292
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                                                   1
                                                             UNITED STATES DISTRICT COURT
1
    STATE OF NEW YORK
                                                   2
                                                            FOR THE DISTRICT OF MASSACHUSETTS
 2
    SUPREME COURT: COUNTY OF ERIE
 3
 4
                                                      IN RE: PHARMACEUTICAL ) MDL NO. 1456
    COUNTY OF ERIE,
5
            Plaintiff,
                                                      INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION
                         ) Index No. 05-2439
6
                                                   6
                                                     PRICE LITIGATION ) 01-CV-12257-PBS
7
    ABBOTT LABORATORIES, INC., )
                                                   7
                                                      THIS DOCUMENT RELATES TO )
                                                      U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris
8
    et al.,
                                                      the Florida Keys, Inc., et al)
                                                   9
9
            Defendants.
                                                  10
                                                                       ) Chief Magistrate
10
                                                                             ) Judge Marianne B.
                                                  11
                                                     Boehringer Ingelheim
11
                                                                           ) Bowler
                                                  12
                                                      Corporation, et al.,
12
13
           STATE OF WISCONSIN CIRCUIT COURT
                                                  13 No. 07-CV-10248-PBS
                                                                              )
14
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               DANE COUNTY Branch 9
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15
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16
    STATE OF WISCONSIN,
                                                          Continued videotaped deposition of SUE GASTON,
                                                  17 held at the law offices of Jones Day, 51 Louisiana
17
            Plaintiff.
18
                         ) Case No. 04-CV-1709
                                                  18 Avenue, N.W., Washington, D.C. 20001-2113, the
       VS.
    AMGEN INC., et al.,
                                                      proceedings being recorded stenographically by
                                                  19
19
                              )
                                                  20
                                                      Jonathan Wonnell, a Registered Professional Court
20
           Defendants.
                                                  21
                                                      Reporter and Notary Public of the District of
21
22
                                                  22 Columbia, and transcribed under his direction.
                                           Page 293
                                                                                             Page 295
1
           IN THE CIRCUIT COURT FOR
                                                   1
                                                          APPEARANCES OF COUNSEL
2
          MONTGOMERY COUNTY, ALABAMA
                                                   2
3
   _____
                                                   3
                                                       On behalf of the United States of America:
4 ITMO: ALABAMA MEDICAID
                                                   4
                                                   5
5
  PHARMACEUTICAL AVERAGE ) MASTER DOCKET NO.
                                                               ANA MARIA MARTINEZ, ESQ.
  WHOLESALE PRICE LITIGATION ) CV-2005-219
                                                               United States Department of Justice
6
                                                   6
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7 -----)
                                                               99 N.E. 4th Street
  THIS DOCUMENT RELATES TO: )
                                                   8
                                                               Miami, Florida 33132
  STATE OF ALABAMA v. )
                                                   9
                                                               (305) 961-9431
10 ABBOTT LABORATORIES, INC. )
                                                   10
                                                               ana.maria.martinez@usdoj.gov
11 -----
                                                  11
12
                                                  12
                                                               -- and --
13
                                                  13
14
                                                  14
                                                               JAMES J. FAUCI, ESQ. (via phone)
15
                                                               United States Attorney's Office
                                                  15
16
                                                               John Joseph Moakley Building
                                                  16
                                                               1 Courthouse Way
17
                                                  17
18
                                                  18
                                                               Boston, Massachusetts 02210
19
                                                  19
                                                               (617) 748-3298
20
                                                  20
21
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                                                  22
22 (CONTINUED)
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Washington, DC

	Page 296	_	Page 298
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2		2	
3	On behalf of the U.S. Department of Health and	3	On behalf of Ven-A-Care of the Florida Keys, Inc.:
4	Human Services:	4	MADIODV D. ALDEE, ECO.
5	LECUIE M. CTAFFORD, FOO	5	MARJORY P. ALBEE, ESQ.
6	LESLIE M. STAFFORD, ESQ.	6	Mager & Goldstein LLP
7	U.S. Department of Health & Human Services	7	1818 Market Street, Suite 3710
8	Office of General Counsel, CMS Division	8	Philadelphia, Pennsylvania 19103
9	7500 Security Boulevard	9	(215) 640-3280
10	Mail Stop C2-05-23	10	malbee@magergoldstein.com
11	Baltimore, Maryland 21244	11	
12	(410) 786-9655	12	On behalf of Abbott Laboratories, Inc.:
13		13	DAME TODOGO 500
14	On behalf of the State of Alabama:	14	DAVID TORBORG, ESQ.
15	DALII 1.741N 500 ( )	15	SEAN P. MALONE, ESQ.
16	PAUL LYNN, ESQ. (via phone)	16	Jones Day
17	Beasley, Allen, Crow, Methvin, Portis &	17	51 Louisiana Avenue, N.W.
18	Miles, P.C.	18	Washington, D.C. 20001-2113
19	218 Commerce Street	19	(202) 879-3939
20	Montgomery, Alabama 36104	20	dstorborg@jonesday.com
21	(800) 898-2034	21	spmalone@jonesday.com
22	paul.lynn@beasleyallen.com	22	
	Page 297		Page 299
1	APPEARANCES (Cont'd)	1	APPEARANCES (Cont'd)
2		2	(33 2)
3	On behalf of the State of Florida:	3	On behalf of Aventis Pharmaceuticals and Sanofi
4		4	Synthelabo:
5	MARY S. MILLER, ESQ. (via phone)	5	3
6	Office of the Attorney General of Florida	6	MICHAEL L. KOON, ESQ.
7	PL-01, The Capitol	7	Shook, Hardy & Bacon, LLP
8	Tallahassee, Florida 32399-1050	8	2555 Grand Boulevard
9	(850) 414-3600	9	Kansas City, Missouri 64108-2613
10	mary_miller@oag.state.fl.us	10	(816) 474-6550
11		11	jkoon@shb.com
12	On behalf of the City of New York and all New York	12	•
13	Counties other than Nassau and Orange; and the	13	On behalf of Bristol-Myers Squibb:
14	States of Alaska, Hawaii, Idaho, Illinois, Kentucky,	14	·
15	South Carolina and Wisconsin:	15	DIANNE M. PETERSON, ESQ. (via phone)
16		16	Hogan & Hartson
17	MICHAEL WINGET-HERNANDEZ, ESQ.	17	875 Third Avenue
18	Winget-Hernandez, LLC	18	New York, New York 10022
19	3112 Windsor Road, Suite 228	19	(212) 918-3000
20	Austin, Texas 78703	20	dmpeterson@hhlaw.com
21	(512) 858-4181	21	
22	michael@winget-hernandez.com	22	

4 (Pages 296 to 299)

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	washington, bo		
	Page 300		Page 302
1 2	APPEARANCES (Cont'd)	1 2	APPEARANCES (Cont'd)
3 4	On behalf of Dey, Inc., Dey, L.P. and Mylan:	3	On behalf of Ethex Corporation:
5	SARAH L. REID, ESQ.	5	CLARA VONDRICH, ESQ.
6	Kelley, Drye & Warren LLP	6	Arnold & Porter
7	101 Park Avenue	7	555 Twelfth Street, N.W.
8	New York, New York 10178	8	Washington, D.C. 20004
9	(212) 808-7720	9	(202) 942-5000
10	sreid@kelleydrye.com	10	
11		11	
12	On behalf of Roxane Laboratories and Boehringer	12	ALSO PRESENT:
13	Ingelheim:	13	OONIMAY BARKER 1/11
14	IADED T LIFOX FCO	14	CONWAY BARKER, Videographer
15	JARED T. HECK, ESQ.	15	
16 17	Kirkland & Ellis 200 East Randolph Drive	16 17	
18	Chicago, Illinois 60601	18	
19	(312) 469-7087	19	
20	jheck@kirkland.com	20	
21	J. 1001. C. 1 1 1 1 1 1	21	
22		22	
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1	APPEARANCES (Cont'd)	1	CONTENTS
2	,	2	WITNESS NAME: SUE GASTON PAGE
3	On behalf of Sandoz, Inc.:	3	Examination By Mr. Torborg 310
4		4	Examination By Mr. Bueker 402
5	MILANA SALZMAN, ESQ. (via phone)	5	Examination By Ms. Reid 535
6	White & Case LLP	6	Examination By Mr. Heck
7	1155 Avenue of the Americas	7	Examination By Mr. Koon 548
8	New York, New York 10036-2787 (212) 819-8711	8	EXHIBITS
10	msalzman@whitecase.com	10	NUMBER DESCRIPTION PAGE
11	msaizmane wintecase.com	11	Exhibit Abbott 752, excerpt from rough
12	On behalf of Schering-Plough Corporation,	12	transcript of deposition of
13	Schering Corporation and Warrick	13	Zachary Bentley 315
14	Pharmaceuticals Corporation:	14	Exhibit Abbott 753, HHC004-0191 - 0192 385
•	ı	15	Exhibit Abbott 754, HHD 180-0034 - 0039 391
15		13	·
15 16	JOHN P. BUEKER, ESQ.	16	Exhibit Abbott 755, KY_DMS_0000000125919 - 5921 398
	Ropes & Gray	16 17	
16 17 18	Ropes & Gray One International Place	16 17 18	EXHIBITS
16 17 18 19	Ropes & Gray One International Place Boston, Massachusetts 02110-2624	16 17 18 19	E X H I B I T S  NUMBER DESCRIPTION PAGE
16 17 18 19 20	Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050	16 17 18 19 20	E X H I B I T S  NUMBER DESCRIPTION PAGE  Exhibit NY Counties 001, excerpt from the CFR
16 17 18 19	Ropes & Gray One International Place Boston, Massachusetts 02110-2624	16 17 18 19	E X H I B I T S  NUMBER DESCRIPTION PAGE

5 (Pages 300 to 303)

# **EXHIBIT O**



# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) MDL No. 1456 ) Civil Action No. 01-12257-PBS
THIS DOCUMENT RELATES TO:	) Judge Patti B. Saris
ALL ACTIONS <sup>1</sup>	) Magistrate Judge Marianne B. Bowler
	)

#### CROSS-NOTICE OF DEPOSITION OF THOMAS GUSTAFSON

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Schering Corporation ("Schering"), Schering Plough Corporation ("Schering Plough"), and Warrick Pharmaceuticals Corporation ("Warrick")<sup>2</sup> hereby cross-notice the deposition of Thomas Gustafson for purposes of all cases pending in MDL No. 1456.

On September 4, 2007, attorneys for Abbott Laboratories, Inc. noticed the deposition of Mr. Gustafson for purposes of *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, No. 06-CV-11337-PBS, a matter that is currently a part of MDL No. 1456. This notice is attached hereto. Through this cross-notice, counsel are hereby informed that the deposition of Mr. Gustafson will also be proceeding for purposes of all other cases pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>1</sup> As explained herein, this cross-notice regards all actions pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>2</sup> This cross-notice, which is being served for purposes of a number of actions pending in MDL No. 1456, is only served in a particular action on behalf of those entities that have appeared, been named, and been served in that particular action. To the extent that Schering, Schering Plough, or Warrick have not appeared, been served, or been named in a particular action, this notice does not constitute an appearance, consent to service, or consent to joinder

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Ave. N.W., Washington, D.C. on September 28, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for the deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

By attorneys,

/s/ Jobe G. Danganan

John T. Montgomery (BBO#352220) Steven A. Kaufman (BBO#262230) Daniel J. Bennett (BBO#663324) Jobe G. Danganan (BBO#660446) Ropes & Gray LLP One International Place Boston, Massachusetts 02110-2624

(617) 951-7000

Attorneys for Schering Corporation, Schering-Plough Corporation, and Warrick Pharmaceuticals Corporation

Dated: September 10, 2007

by Schering, Schering Plough, or Warrick, respectively, in that action. Schering, Schering Plough, and Warrick also do not waive any objection regarding jurisdiction or other defenses, where applicable.

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Jobe G. Danganan
Jobe G. Danganan

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	)	MDL NO. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
	)	
	)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)	
U.S. ex rel. Ven-A-Care of the Florida Keys,	)	Chief Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc., et al.	)	-
No. 06-CV-11337-PBS	)	

#### NOTICE OF DEPOSITION OF THOMAS GUSTAFSON

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Thomas Gustafson.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Ave. N.W., Washington, D.C. on September 28, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: September 4, 2007

/s/ David S. Torborg

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher CookDavid S. TorborgJONES DAY51 Louisiana Avenue, N.W.

Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF THOMAS GUSTAFSON to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 4th day of September, 2007.

/s/ David S. Torborg
David S. Torborg

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	Pending in:			
IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS			
THE DOCUMENT DELATES TO	MDL NO. 1456			
THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.	Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257-PBS			
	Judge Patti B. Saris			
	Chief Magistrate Judge Marianne B. Bowler			
	SUBPOENA DUCES TECUM			
Care of: Andy Mao, Esq. U.S. Department of Justice P.O. Box 261 Washington, D.C. 20044  YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.				
PLACE OF TESTIMONY	COURTROOM			
YOU ARE COMMANDED to appear at the place, da	DATE AND TIME ate, and time specified below to testify at the taking of			
a deposition in the above case.  PLACE OF DEPOSITION  Jones Day	DATE AND TIME			
51 Louisiana Ave. N.W. Washington, D.C. 20001	September 28, 2007 at 9:00 AM			
YOU ARE COMMANDED to produce and permit insobjects at the place, date, and time specified below (list Please see attached Exhibit A	spection and copying of the following documents or t documents or objects):			
PLACE	DATE AND TIME			
YOU ARE COMMANDED to permit inspection of the	ne following premises at the date and time specified			
PREMISES	DATE AND TIME			
Any organization not a party to this suit that is sul designate one or more officers, directors, or managing behalf, and may set forth, for each person designated, Rules of Civil Procedure, 30(b)(6).	agents, or other persons who consent to testify on its			
ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR P DEFENDANT)  Attorney for Defendant Abbott Laboratories, Inc.	September 4, 2007			
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Torborg, Esq., Jones Day, 51 Louisiana Ave., N.W., Wash 20001, (202) 879-3939				

#### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
     (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

#### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### **EXHIBIT A**

# **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

#### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data

compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# EXHIBIT O-1

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Gustafson, Thomas A.
0001
                 UNITED STATES DISTRICT COURT
 1
 2
              FOR THE DISTRICT OF MASSACHUSETTS
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 4
     IN RE: PHARMACEUTICAL
                                         MDL NO. 1456
 5
     INDUSTRY AVERAGE WHOLESALE
                                         CIVIL ACTION
 6
     PRICE LITIGATION
                                         01-CV-12257-PBS
 7
     THIS DOCUMENT RELATES TO
 8
     U.S. ex rel. Ven-a-Care of
                                         Judge Patti B. Saris
9
     the Florida Keys, Inc.
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                                         Chief Magistrate
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11
     Abbott Laboratories, Inc.,
                                         Judge Marianne B.
12
     No. 06-CV-11337-PBS
                                         Bowler
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            (captions continue on following pages)
15
         Videotaped deposition of THOMAS A. GUSTAFSON
16
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                            Volume I
18
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20
                                 Washington, D.C.
21
                                  Friday, September 28, 2007
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                                  9:00 a.m.
0002
                    COMMONWEALTH OF KENTUCKY
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 2
               FRANKLIN CIRCUIT COURT - DIV. II
 3
     COMMONWEALTH OF KENTUCKY,
 4
                 Plaintiff,
 5
                                            Civil Action No.
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                                            03-CI-1134
          VS.
     ABBOTT LABORATORIES, INC., et al.,
8
                 Defendants.
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11
                  IN THE COURT OF COMMON PLEAS
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                     FIFTH JUDICIAL CIRCUIT
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     STATE OF SOUTH CAROLINA, and
14
                                               STATE OF
     HENRY D. McMASTER, in his official
15
                                            SOUTH CAROLINA
     capacity as Attorney General for
                                             COUNTY OF
16
     the State of South Carolina,
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                                               RI CHLAND
18
                 Plaintiffs,
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          VS.
                                             Case No.
                                             2006-CP-40-4394
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     ABBOTT LABORATORIES, INC.
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                 Defendant.
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0003
          IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
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                        STATE OF HAWALL
     STATE OF HAWAII,
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                 Plaintiff,
                                       Case No.
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                                       06-1-0720-04 EEH
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     ABBOTT LABORATORIES, INC.,
 8
     et al.,
                                       JUDGE EDEN
                               Page 1
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Gustafson, Thomas A.
 9
                     Defendants. ) ELIZABETH HIFO
10
11
                  STATE OF WISCONSIN CIRCUIT COURT
12
13
                              DANE COUNTY
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15
      STATE OF WISCONSIN,
16
                    Plaintiff,
17
                                                CASE NO. 04-CV-1709
            VS.
      AMGEN INC., et al.,
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                    Defendants.
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0004
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                                       Washington, D.C.
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6
                                       Friday, September 28, 2007
                                       9:00 a.m.
             Videotaped deposition of THOMAS A. GUSTAFSON,
 7
      called for examination by counsel for Abbott
      Laboratories in the above-entitled matter, pursuant to
 8
      subpoena, taken at the law offices of Jones Day, 51
Louisiana Avenue, N.W., Washington, D.C. 20001-2113,
before Jonathan Wonnell, a Registered Professional Court
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      Reporter and Notary Public of the District of Columbia.
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0005
           APPEARANCES OF COUNSEL
 1
 2345678
             On behalf of the United States of America:
                   ANDY J. MAO, ESQ.
JUSTIN DRAYCOTT, ESQ.
U.S. Department of Justice
                   Civil Division
                   P.O. Box 261, Ben Franklin Station Washington, D.C. 20044
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                    (202) 305-9300
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                   justi n. draycott@usdoj. gov
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             On behalf of the U.S. Department of Health
15
                      and Human Services:
                   BRI AN A. KELLEY, ESQ.
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                   U.S. Department of Health & Human
17
                                    Page 2
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```
Gustafson, Thomas A.
18
                   Servi ces
                 Office of General Counsel, CMS Division 330 Independence Avenue, S.W., Room 5345
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                 Washington, D.C. 20201
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0006
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                 PL-01, The Capitol
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                 Tallahassee, Florida 32399-1050
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                 (850) 414-3600
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                 mary_miller@oag.state.fl.us
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0007
                APPEARANCES (Cont'd)
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 23456
           On behalf of New York City and all New York
                   Counties except Nassau and Orange; and
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                 Austin, Texas 78703
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           On behalf of Ven-A-Care of the Florida Keys,
13
                   Inc.:
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                 amiller@elllaw.com
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                APPEARANCES (Cont'd)
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           On behalf of Abbott Laboratories, inc.:
 2
 3
                 R. CHRI STOPHER COOK, ESQ.
                               Page 3
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Gustafson, Thomas A.
                 HILARY A. RAMSAY, ESQ.
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                 (202) 879-3939
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           On behalf of Bristol-Myers Squibb:
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0010
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                APPEARANCES (Cont'd)
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           On behalf of Roxane Laboratories and
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                 Kirkland & Ellis
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                 200 East Randolph Drive
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                 Chicago, Illinois 60601
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                 (312) 861-2285
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                 egortner@kirkland.com
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           On behalf of Aventis Pharmaceuticals and
                               Page 4
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Gustafson, Thomas A.
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                    Sanofi Synthel abo:
                  DAVID T. FÍSCHER, ESQ.
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                  Shook, Hardy & Bacon, LLP
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                  Suite 800
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                  (202) 783-8400
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                  dfi scher@shb. com
21
22
0011
                APPEARANCES (Cont'd)
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            On behalf of Schering-Plough Corporation,
 4
                    Schering Corporation and Warrick
 5
6
7
                  Pharmaceuticals Corporation:
GINGER APPLEBERRY, ESQ. (via phone)
                  Locke, Liddell & Sapp
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                  2200 Ross Avenue, Sui te 2200
                  Dallas, Texas 75201
(214) 740-8725
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                  sjones@lockeliddell.com
12
13
            On behalf of Baxter Health Care and Baxter
14
                    International:
                  TINA DUCHARME REYNOLDS, ESQ. (via phone)
15
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                  Dickstein Shapiro LLP
                  1825 Eye Street, N.W.
17
18
                  Washington, D.C. 20006
19
                  (202) 420-4114
20
                  treynol ds@di ckstei nshapi ro. com
21
22
0012
                APPEARANCES (Cont'd)
 1
            ALSO PRESENT:
 2345678
                  CONWAY BARKER, Videographer
 9
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### Gustafson, Thomas A.

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0013
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 1
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 4
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7
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               By Mr. Cook:
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          Bates ref)
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          Bates ref)
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13
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15
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16
17
          First Set of Interrogatories (No Bates
18
          ref)
19
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21
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0014
                     PROCEEDINGS
1
 2
                                   In the United States
                THE VI DEOGRAPHER:
 3
     District Court for the District of Massachusetts In
 4
     Re: Pharmaceuticals Industry Average Wholesale
 5
     Price Litigation, Case Number 01-CV-12257 PBS, This
 6
     Document Relates to Ven-A-Care of the Florida Keys
 7
     Incorporated versus Abbott Laboratories
8
     Incorporated et al, Case Number 06-CV-11337 PBS,
9
     this is the deposition of Thomas Gustafson.
10
     Today's date is September 28th 2007.
                                           The Location
     of the deposition is Jones Day, 51 Louisiana
11
12
     Avenue, Northwest, Washington, D.C.
13
                Will counsel please introduce yourselves
14
     and state whom you represent?
15
                MR. COOK:
                            Christopher Cook from Jones
16
           We represent Abbott Laboratories, Inc. I'll
17
     be accompanied on and off today by Hilary Ramsey to
18
     my right.
19
                MR. GORTNER:
                               Eric Gortner from Kirkland
20
     & Ellis.
               I represent Roxane Laboratories and
21
     Boehringer Ingelheim.
22
                MS. REID:
                            Sarah Reid from Kelley Drye.
0015
 1
     I represent Dey and Mylan.
 2
                MR. FI SCHER:
                               David Fischer from Shook,
                    I represent Sanofi and Aventis.
     Hardy & Bacon.
 4
5
                             Adam Miller of Engstrom,
                MR. MILLER:
     Lipscomb & Lack of Los Angeles on behalf of
 6
     Ven-A-Care.
                MR. PAUL:
                            Nicholas Paul of the
                              Page 6
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Gustafson, Dr. Thomas A.
fson0200
                FOR THE DISTRICT OF MASSACHUSETTS
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 3
     IN RE: PHARMACEUTICAL
                                        MDL NO. 1456
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     INDUSTRY AVERAGE WHOLESALE
                                        CIVIL ACTION
 5
     PRICE LITIGATION
                                        01-CV-12257-PBS
     THIS DOCUMENT RELATES TO
 6
 7
     U.S. ex rel. Ven-a-Care of
                                        Judge Patti B. Saris
 8
     the Florida Keys, Inc.
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          ٧.
10
     Abbott Laboratories, Inc.,
                                        Chief Magistrate
11
     No. 06-CV-11337-PBS
                                        Judge Marianne B.
                                          Bowl er
12
          (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)
13
14
        Videotaped deposition of DR. THOMAS A. GUSTAFSON
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                             Volume II
16
                                            Washington, D.C.
17
                                            Monday, December 17,
2007
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                                            9:19 a.m.
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                     COMMONWEALTH OF KENTUCKY
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                     FRANKLIN COURT - DIV. II
     COMMONWEALTH OF KENTUCKY,
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                  Pl ai nti ff,
                                      Civil Action No.
                                     03-CI -1134
          VS.
     ABBOTT LABORATORIES, INC.,
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     et al.,
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                  Defendants.
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0202
                   IN THE COURT OF COMMON PLEAS
 1
 2
                      FIFTH JUDICIAL CIRCUIT
 3
     STATE OF SOUTH CAROLINA, and:
 4
                                      STATE OF SOUTH CAROLINA
 5
     Henry D. McMaster, in his : COUNTY OF RICHLAND
     official capacity as
Attorney General for the
                                      Case No. 2006-CP-40-4394
 6
 7
                               Page 1
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Gustafson, Dr. Thomas A.
    State of South Carolina, :
8
9
                 Plaintiffs,
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          VS.
     ABBOTT LABORATORIES, INC.,
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                 Defendant.
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0203
          IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
 1
          STATE OF HAWAII
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     STATE OF HAWAII,
                                 : Case No. 06-1-0720-04 EEH
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 5
              Pl ai nti ff,
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          VS.
 7
     ABBOTT LABORATORIES, INC.,
 8
     et al.,
9
                 Defendants.
10
11
                STATE OF WISCONSIN CIRCUIT COURT
12
    STATE OF WISCONSIN, :
Plaintiff, :
Case No. 04-CV-1709
13
                 DANE COUNTY
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    AMGEN, INC., et al.,
Defendants.
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0204
     IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
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     OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
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     - - - - - - - X
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     STATE OF IDAHO,
                Plaintiff, :
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 6
                                    Case No. CV OC 0701846
          VS.
 7
     ABBOTT LABORATORIES,
8
           Defendant.
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     - - - - - - - X
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      IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI FIRST JUDICIAL DISTRICT
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13
     THE STATE OF MISSISSIPPI,
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              Pl ai nti ff,
16
          VS.
                                 : Civil Action No.
                             Page 2
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Gustafson, Dr. Thomas A.
      ABBOTT LABORATORIES, INC., : G2005-2021
17
18
      et al.,
19
                     Defendants.
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0205
                          COURT OF COMMON PLEAS
 1
 2
                          HAMILTON COUNTY, OHIO
      STATE OF OHIO, : Judge Myers
Plaintiff, : Consolidated Civil Case
vs. : A0402047

DEY, INC., et al., : (Case Remanded - No. may
Defendants. : change)
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0206
             IN THE COMMONWEALTH COURT OF PENNSYLVANIA
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          - - - - - - - - - - - X
 3
      COMMONWEALTH OF PENNSYLVANIA:
 4
      by THOMAS W. CORBETT, JR., in:
      his capacity as Attorney
General of the Commonwealth
 5
 6
 7
      of Pennsyl vania,
 8
                     Plaintiff,
 9
                                            No. 212 M.D. 2004
            VS.
10
      TAP Pharmaceutical Products,
      Inc., et al.,
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12
                     Defendants.
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14
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17
18
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0207
                          IN THE CIRCUIT COURT OF
 1
 2
                        MONTGOMERY COUNTY, ALABAMA
                                     Page 3
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Gustafson, Dr. Thomas A.
                   - - - - - - - X
     STATE OF ALABAMA,
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 5
          Pl ai nti ff,
     vs. : Case No.: CV-2005-219
ABBOTT LABORATORIES, INC., : Judge Charles Price
 6
 7
     et al.
 8
 9
          Defendants.
10
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12
           IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
13
           COUNTY DEPARTMENT, CHANCERY DIVISION
14
15
     THE PEOPLE OF THE STATE OF :
16
     ILLINOIS,
                 PI ai nti ff,
17
18
                                   : Case No. 05CH02474
          VS.
19
     ABBOTT LABORATORIES, et al.,:
20
     Defendants. :
21
22
0208
     STATE OF NEW YORK
1
2
     SUPREME COURT: COUNTY OF OSWEGO
     COUNTY OF OSWEGO,
 4
             OF OSWEGO,
Plaintiff,
 5
 6
                                   : Index No. 06-0697
          VS.
     ABBOTT LABORATORIES, INC.,
 7
     et al.,
8
9
                  Defendants. :
10
     - - - - - - - - X
11
     STATE OF NEW YORK
     SUPREME COURT: COUNTY OF SCHENECTADY
12
     COUNTY OF SCHENECTADY,
Plaintiff,
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                                    : Index No. 06-0886
16
     ABBOTT LABORATORIES, INC.,
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18
     et al.,
19
                  Defendants.
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0209
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                  IN AND FOR LEON COUNTY, FLORIDA
 3
     THE STATE OF FLORIDA
 4
     ex rel.
 5
     VEN-A-CARE OF THE FLORIDA
     KEYS, INC., a Florida
Corporation, by and through its
 7
 8
     principal officers and directors, ZACHARY T. BENTLEY and T. MARK JONES,
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Gustafson, Dr. Thomas A.
12
                     Plaintiffs,
13
                                                      Civil Action
            VS.
      MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G
PHARMACEUTICALS INC.; NOVOPHARM : Judge: William
14
15
      LTD., SCHEIN PHARMACEUTICAL, INC.;:
16
                                                    Ĺ. Gary
17
      TEVA PHARMACEUTICAL INDUSTRIES
18
      LTD., TEVA PHARMACEUTICAL USA;
19
      and WATSON PHARMACEUTICALS, INC.,
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                    Defendants.
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0210
          IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
 1
      STATE OF MI SSOURI
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 4
      STATE OF MISSOURI, ex rel,
 5
6
      JEREMIAH W. (JAY) NIXON,
      Attorney General,
 7
      MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF MEDICAL
 8
 9
                                                      Case No.
10
      SERVI CES,
                                                      054-1216
11
                     Plaintiffs,
                                                      Division No. 31
12
            VS.
      DEY INC., DEY, L.P., MERCK KGAA,
13
14
      EMD, INC., WARRICK
15
      PHARMACEUTI CALS CORPORATION,
16
      SCHERING-PLOUGH CORPORATION, and
17
      SCHERING CORPORATION,
18
                     Defendants.
19
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21
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0211
 1
                    Continued Videotaped Telephone Deposition
 2
      of DR. THOMAS A. GUSTAFSON, a witness herein, called
      for examination by counsel for Abbott Laboratories in
the above-entitled matter, pursuant to subpoena, the
witness being duly sworn by SUSAN L. CIMINELLI, a
 3
 4
 5
 6
      Notary Public in and for the District of Columbia,
      taken at the offices of Jones Day, 51 Louisiana
Avenue, N.W., Washington, D.C., at 9:19 a.m., and the
proceedings being taken down by Stenotype by SUSAN L.
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      CIMINELLI, CRR, RPR, and transcribed under her
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      di recti on.
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Gustafson, Dr. Thomas A. **APPEARANCES:** On Behalf of the United States of Ameri ca: 6 7 8 ANDREW MAO, ESQ. JUSTIN DRAYCOTT, ESQ. U.S. Department of Justice Civil Division 601 D Street, Northwest PHB - 9028/P.O. Box 261 Washington, D.C. 20044 justin draycott@usdoj.gov andy. mao@usdoj . gov (202) 307-1088 **APPEARANCES:** On Behalf of the Centers for Medicare & Medicaid Services: LESLIE M. STAFFORD, ESQ. Centers for Medicare & Medicaid Services 7500 Security Boulevard C2-05-23 Baltimore, MD leslie. stafford@hhs. gov On behalf of the State of California: (Via telephone) RITA HANSCOM, ESQ. Supervising Deputy Attorney General Civil Prosecutions Unit P. O. Box 85266 110 West A Street, #1100 San Di ego, CA 82186 (619) 688-6099 ri ta. hanscom@doj . ca. gov 

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           Schering Corporation, Warrick Pharmaceuticals
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           Corporation, and B. Braun Medical, Inc.:
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           On Behalf of Dey, Inc. and Dey, L.P. and Mylan:
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                  (212) 808-7811
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           On Behalf of Roxane Laboratories and Boehringer
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           Ingel heim:
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           On behalf of New York City and all New York
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           Counties except Nassau and Orange; and
           the States of Hawaii, Kentucky, South
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 6
           Carolina and Wisconsin:
 7
                  MI CHAEL WINGET-HERNANDEZ, ESQ.
 8
                 Winget-Hernandez LLC
9
                 2520 Jarratt Avenue
10
                 Austin, TX
                              78703
11
           ALSO PRESENT:
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                  Conway Barker, videographer
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Gustafson, Dr. Thomas A.
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     EXAMINATION
                                               COUNSEL FOR
     DR. THOMAS A. GUSTAFSON
                                            DEFENDANT ABBOTT
 4
      By Mr. Cook
                                                     222
 5
6
                                               DEFENDANT DEY
      By Ms. Reid
                                                     388
 7
                                             DEFENDANT ROXANE
 8
      By Mr. Gortner
                                                     433
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10
          Afternoon session - 328
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12
                         EXHIBITS
13
     ABBOTT EXHIBIT NO.
                                                        PAGE
14
     Exhibit Abbott 438 HHD079-0001-29 IG Report
                                                         220
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     Exhibit Abbott 439 HHD079-0030-42 Report of
                                                         220
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                         Congress
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     Exhibit Abbott 440 HHD079-0043-89 Public
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                         Policy Institute
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0220
                   PROCEEDINGS
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                       (Exhibit Abbott 438,
                        Exhibit Abbott 439,
                        and Exhibit Abbott 440 were
                        marked for identification.)
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                 THE VI DEOGRAPHER:
                                    In the United States
 7
     District Court for the District of Massachusetts In
 8
          Pharmaceutical Industry Average Wholesale Price
 9
     Litigation related to the U.S. ex rel Ven-A-Care of
     the Florida Keys, Incorporated versus Abbott
10
     Laboratories, Incorporated et al.
11
12
                 Case number 01-CV-12257 PBS and other
13
     cases cross-noticed.
                            This is volume II in the
14
     deposition of Thomas Gustafson. Today's date is
     December 17th, 2007. The location of the deposition
15
     is Jones Day, 51 Louisiana Avenue, Northwest, Washington, D.C.
16
17
18
                 Will counsel please identify yourselves
19
     and state whom you represent.
20
                 MR. ČOOK:
                            Christopher Cook from Jones
21
     Day.
           We represent Abbott Laboratories.
22
                 MR. GORTNER:
                               Eric Gortner from Kirkland &
0221
     Ellis for Roxane Laboratories, Inc. and entities
 1
2
3
     affiliated with Boehringer Ingelheim Corporation.
                            Sarah Reid from Kelley, Drye &
                MS. REID:
 4
     Warren representing the Dey Companies, and in the
 5
6
     cross-notice depositions also representing the Mylan
     Defendant.
 7
                 MS. STAFFORD:
                                Leslie Stafford on behalf
 8
     of the Centers for Medicare and Medicaid Services.
                MR. DRAYCOTT: Justin Draycott, United
 9
10
     States Department of Justice.
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Page 9

# **EXHIBIT P**



### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	) MDL NO. 1456
AVERAGE WHOLESALE PRICE	
LITIGATION	) CIVIL ACTION: 01-CV-12257-PBS
	) Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)
ALL CASES IN MDL NO. 1456. <sup>1</sup>	) Chief Magistrate Judge Marianne B. Bowler

## CROSS-NOTICE OF DEPOSITIONS OF AMY SERNYAK AND CYNTHIA HANSFORD

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively "Abbott") hereby cross-notice the depositions of Amy Sernyak and Cynthia Hansford for purposes of the above-captioned action. These depositions have been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States

District Court for the Southern District of Florida (No. 06-21303-CIV-ASG) and now part of MDL 1456 in the United States District Court for the District of Massachusetts.

The depositions will take place before a notary public, or any other officer authorized to administer oaths, at the office of Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103. Ms. Sernyak's deposition will begin at 9:00 a.m. on March 6, 2007. Ms. Hansford's deposition will begin at 9:00 a.m. on March 14, 2007. The depositions will be taken upon cross-examination.

Such depositions will be recorded by stenographic and/or sound and visual means. The depositions are being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

Dated: February 28, 2007 /s/ Brian J. Murray

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
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Chicago, IL 60601
Telephone: (312) 782-39

Telephone: (312) 782-3939 Facsimile: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1576852v1 -2-

# **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITIONS OF AMY SERNYAK AND CYNTHIA HANSFORD to be served upon be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 28th day of February, 2007.

/s/ Jeremy P. Cole

# **EXHIBIT P-1**

Hansford, Cynthia March 14, 2007

# Philadelphia, PA

Page 1 1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MASSACHUSETTS 3 ----X 4 IN RE: PHARMACEUTICAL : MDL NO. 1456 5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION 6 PRICE LITIGATION : 01-CV-12257-PBS 7 ----X THIS DOCUMENT RELATES TO : 8 9 U.S. ex rel. Ven-A-Care of : 10 The Florida Keys, Inc. : v. Abbott Laboratories, : 11 12 Inc., No. 06-CV-11337-PBS : 13 ----X 14 Video Tape Deposition of CYNTHIA 15 HANSFORD was taken pursuant to notice at the Law Offices of Morgan Lewis, 1701 Market Street, 16 17 Philadelphia, Pennsylvania, on Wednesday, 18 March 14, 2007, beginning at 9:00 a.m., before Jeanne Christian, Court Reporter-Notary 19 20 Public and Michael Mullen, Video Tape Operator, 21 there being present. 22

Hansford, Cynthia March 14, 2007

# Philadelphia, PA

	Pag	2	Page 4
1	APPEARANCES:	1	APPEARANCES: (CONTINUED)
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	·		
	Pag		Page 5
1	APPEARANCES: (CONTINUED)	1	APPEARANCES: (CONTINUED)
2	APPEARANCES: (CONTINUED) BERGER & MONTAGUE, P.C.	1 2	APPEARANCES: (CONTINUED) ROPES & GRAY LLP
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602	1 2 3 4 5 6 7 8 9 10 12 13 14 15 16	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602  Phone: (312) 346-2222	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 469-7002
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602  Phone: (312) 346-2222	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 469-7002
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602  Phone: (312) 346-2222	1 2 3 4 5 6 7 8 9 10 12 13 14 15 16 17 18 19	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 469-7002
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602  Phone: (312) 346-2222	1 2 3 4 5 6 7 8 9 10 12 13 14 15 16 17 18 19 20	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 469-7002
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	APPEARANCES: (CONTINUED)  BERGER & MONTAGUE, P.C.  BY: ROSLYN G. POLLACK, ESQUIRE  1622 Locust Street  Philadelphia, Pennsylvania 19103  Phone: (215) 875-3000  Representing Ven-A-Care of the Florida Keys  WEXLER TORISEVA WALLACE LLP  BY: JENNIFER FOUNTAIN CONNOLLY, ESQUI  One North LaSalle Street  Suite 2000  Chicago, Illinois 60602  Phone: (312) 346-2222	1 2 3 4 5 6 7 8 9 10 12 13 14 15 16 17 18 19	APPEARANCES: (CONTINUED) ROPES & GRAY LLP BY: ERIC P. CHRISTOFFERSON, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7976 Representing Schering and Warrick  APPEARING TELEPHONICALLY: KIRKLAND & ELLIS LLP BY: CEYLAN A. EATHERTON, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 469-7002

Hansford, Cynthia March 14, 2007

Philadelphia, PA

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	APPEARING TELEPHONICALLY: (CONTINUED)  WINGET-HERNANDEZ, LLC BY: MICHAEL WINGET-HERNANDEZ, ESQUIRE 3112 Windsor Road, #228 Austin, Texas 78703 Phone: (512) 474-4095 Representing the City of New York, Counties of New York also represented by KMS and the State of Hawaii, State of Wisconsin, State of Kentucky  KEMPPEL, HUFFMAN & ELLIS, P.C. BY: JASON M. GIST, ESQUIRE 255 East Fireweed Lane Suite 200 Anchorage, Alaska 99503 Phone: (907) 277-1604 Representing Schering Division	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	APPEARING TELEPHONICALLY: (CONTINUED) BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. BY: CLINTON C. CARTER, ESQUIRE 218 Commerce Street Montgomery, Alabama 36104 Phone: (334) 269-2343 Representing the State of Alabama  DICKSTEIN SHAPIRO LLP BY: SHAMIR PATEL, ESQUIRE 1825 Eye Street NW Washington, DC 20006 Phone: (202) 420-2728 Representing Baxter  HAYNSWORTH SINKLER BOYD, P.A. BY: SARAH P. SPRUILL, ESQUIRE 1201 Main Street, Suite 2200 Columbia, South Carolina 29201 Phone: (803) 540-7854 Representing Abbott
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	APPEARING TELEPHONICALLY: (CONTINUED) ROPES & GRAY LLP BY: JOBE G. DANGANAN, ESQUIRE One International Place Boston, Massachusetts 02110 Phone: (617) 951-7290 Representing Schering and Warrick  HOGAN & HARTSON LLP BY: HOA T. T. HOANG, ESQUIRE 875 Third Avenue New York, New York 10022 Phone: (212) 918-3640 Representing Bristol Myers Squibb  HOGAN & HARTSON LLP BY: JENNIFER A. WALKER, ESQUIRE 111 South Calvert Street Suite 1600 Baltimore, Maryland 21202 Phone: (410) 659-2700 Representing Amgen, Inc.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	INDEX  IN

# EXHIBIT Q



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO: ALL CASES.

MDL NO. 1456

C.A. No. 01-CV-12257-PBS

Hon. Patti B. Saris

# CROSS-NOTICE OF DEPOSITION IN RELATED STATE COURT CASE

YOU ARE HEREBY NOTIFIED, as required by Case Management Order No. 9, that the deposition of the following individual will be taken upon oral examination at the time and place indicated below. The deposition will be taken before a notary public or another officer authorized by law to administer oaths and recorded by videotape and by stenographic means.

This deposition was originally noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida (No. 06-21303-CIV-ASG) and now part of MDL 1456 in the United States District Court for the District of Massachusetts. A copy of the Notice of Deposition served by Abbott on this same individual is attached.

Deponent	Date/Time	Location
Claire Hardwick	June 6, 2007, at 9:00 a.m.	Center For Medicare & Medicaid Services 7500 Security Boulevard Baltimore, MD 21244

Dated: May 31, 2007 Respectfully submitted,

By /s/ Jennifer Fountain Connolly

Kenneth A. Wexler Jennifer Fountain Connolly Amber M. Nesbitt Wexler Toriseva Wallace LLP One N. LaSalle Street, Suite 2000

Chicago, IL 60602 Telephone: (312) 346-2222

Facsimile: (312) 346-0022

# **CERTIFICATE OF SERVICE**

I, Jennifer Fountain Connolly, hereby certify that I am one of plaintiffs' attorneys and that, on May 31, 2007, I caused a copy of the foregoing *Cross-Notice of Deposition in Related State Court Case* to be served on all counsel of record by causing same to be posted electronically via LexisNexis File & Serve.

/s/ Jennifer Fountain Connolly
Jennifer Fountain Connolly



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE	)	MDL NO. 1456
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO	)	Judge Patti B. Saris
U.S. ex rel. Ven-A-Care of the Florida Keys,	)	Chief Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc., et al. No. 06-CV-11337-PBS	)	

# NOTICE OF DEPOSITION OF CLAIRE HARDWICK

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Claire Hardwick.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of the Center for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 on June 6, 2007 beginning at 9:00 a.m. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: May 24, 2007

/s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF CLAIRE HARDWICK to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 24<sup>th</sup> day of May, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# EXHIBIT Q-1

Hardwick, Claire M. June 6, 2007

Baltimore, MD

		Page 1
1	UNITED STATES DISTRICT COURT	. ago .
2	FOR THE DISTRICT OF MASSACHUSETTS	
3	x	
4	IN RE: PHARMACEUTICAL : MDL NO. 1456	
5	INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:	
6	PRICE LITIGATION : 01-CV-12257-PBS	
7	THIS DOCUMENT RELATES TO :	
8	U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris	
9	the Florida Keys, Inc. v. :	
10	Abbott Laboratories, Inc., : Chief Magistrate	
11	No. 06-CV-11337-PBS : Judge Marianne B.	
12	x Bowler	
13	IN THE CIRCUIT COURT OF	
14	MONTGOMERY COUNTY, ALABAMA	
15	x	
16	STATE OF ALABAMA, :	
17	Plaintiff, :	
18	vs. : Case No.: CV-05-219	
19	ABBOTT LABORATORIES, INC., : Judge Charles Price	
20	et al.,	
21	Defendants.:	
22	x	

Hardwick, Claire M. June 6, 2007

Baltimore, MD

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Page 2
                                                                                                 Page 4
1
     IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
                                                               Videotaped Deposition of CLAIRE M.
                                                    1
2
        IN AND FOR LEON COUNTY, FLORIDA
                                                       HARDWICK, a witness herein, called for examination
3
                                                    3
                                                        by counsel for Abbott Laboratories in the
4
   THE STATE OF FLORIDA
                                                    4
                                                        above-entitled matter, pursuant to notice, the
5
   ex rel.
                                                        witness being duly sworn by Robert M. Jakupciak, a
                                                        Notary Public in and for the District of Columbia,
6
  ----X
                                                    6
7 VEN-A-CARE OF THE FLORIDA
                                                    7
                                                        taken at the offices of Center for Medicare &
  KEYS, INC., a Florida
                                                    8
                                                        Medicaid Services, 7111 Security Blvd., Baltimore,
9 Corporation, by and through its :
                                                    9
                                                        Maryland, 21244, at 9:00 a.m., on June 6, 2007,
10 principal officers and directors, :
                                                    10
                                                        and the proceedings being taken down by Stenotype
11 ZACHARY T. BENTLEY and :
                                                        by Robert M. Jakupciak, RPR.
                                                    11
12 T. MARK JONES,
                                                    12
13
            Plaintiffs, :
                                                    13
14
                      : Civil Action
                                                    14
         VS.
15 MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G
                                                    15
16 PHARMACEUTICALS INC.; NOVOPHARM : Judge: William
                                                    16
17 LTD., SCHEIN PHARMACEUTICAL, INC.;: L. Gary
                                                    17
18 TEVA PHARMACEUTICAL INDUSTRIES :
                                                    18
19 LTD., TEVA PHARMACEUTICAL USA; :
                                                    19
20 and WATSON PHARMACEUTICALS, INC., :
                                                    20
21
            Defendants,
                                                    21
22 ----x
                                                    22
                                                                                                 Page 5
1
     IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
                                                    1
                                                        APPEARANCES:
2
             STATE OF MISSOURI
                                                    2
   ----X
                                                     3
3
                                                        On behalf of the United States of America:
4 STATE OF MISSOURI, ex rel.,
                                                    4
                                                    5
5
   JEREMIAH W. (JAY) NIXON,
                                                               ANA MARIA MARTINEZ, ESQUIRE
    Attorney General, :
                                                               U.S. Department of Justice
6
                                                     6
                                                    7
7
    and
                                                               99 N.E. 4th Street
8
    MISSOURI DEPARTMENT OF SOCIAL
                                                    8
                                                               Miami, Florida 33132
    SERVICES, DIVISION OF MEDICAL : Case No.:
                                                    9
                                                               (305) 961-9431
    SERVICES,
10
                           : 054-1216
                                                    10
11
                                                    11
                                                        On behalf of the U.S. Department of
             Plaintiffs,
                        : Division No. 31
12
                                                        Health and Human Services:
                                                    12
          VS.
13 DEY INC., DEY, L.P., MERCK KGaA, :
                                                    13
14 EMD, INC., WARRICK
                                                    14
                                                               TROY A. BARSKY, ESQUIRE
15 PHARMACEUTICALS CORPORATION,
                                                    15
                                                               U.S. Department of Health and
16 SCHERING-PLOUGH CORPORATION, and :
                                                    16
                                                               Human Services
17 SCHERING CORPORATION.
                                                    17
                                                               C2-05-23
18
             Defendants,
                                                    18
                                                               7500 Security Blvd.
                                                               Baltimore, Maryland 21244-1850
19 -----x
                                                    19
20
                                                    20
                                                               (410) 786-8873
21
                                                    21
22
                                                    22
                                                        (CONTINUED)
```

Hardwick, Claire M. June 6, 2007

Baltimore, MD

	Page 6			Page 8
1	APPEARANCES: (CONTINUED)	1	APPEARANCES: (CONTINUED)	
2		2		
3	On behalf of Abbott Laboratories:	3	On behalf of KMS New York Counties:	
4	LOUIS D. GAREL FOOLURE	4		
5	LOUIS P. GABEL, ESQUIRE	5	MICHAEL WINGET-HERNANDEZ, E	SQUIRE
6	Jones Day	6	Winget-Hernandez, LLC	
7	51 Louisiana Avenue, N.W.	7	3112 Windsor Road, #228	
8	Washington, D.C. 20001	8	Austin, Texas 78703	
9	(202) 879-5411	9		
10 11	(The following atterneys present by phone)	11		
12	(The following attorneys present by phone.)	12		
13	On behalf of Dey Companies and Mylan:	13		
14	On benail of Dey Companies and Mylan.	14	Also Present	
15	CLIFFORD KATZ, ESQUIRE	15	Videographer: Conway Barker	
16	Kelly Drye & Warren LLP	16	videographer. Conway barker	
17	101 Park Avenue	17		
18	New York, New York 10178	18		
19	(212) 808-7609	19		
20	(212) 000 7007	20		
21		21		
22	(CONTINUED)	22		
	Page 7			Page 9
1	APPEARANCES: (CONTINUED)	1	CONTENTS	
2		2		
3	On behalf of Roxane Laboratories and	3	THE WITNESS: CLAIRE M. HARDWICK	PAGE
4	Boehringer-Ingelheim and affiliated entities:	4	Examination By Mr. Gabel011	
5		5		
6	JARED THOMAS HECK, ESQUIRE	6		
7	Kirkland & Ellis LLP	7	EXHIBITS	
8	200 East Randolph Drive	8	(NONE MARKER)	
9	Chicago, Illinois 60601	9	(NONE MARKED)	
10	(312) 469-7087	10		
11	On hehelf of Deuten Heeltheens Comments	11		
12	On behalf of Baxter Healthcare Corporation:	12		
13	TIMA DIJOHADME DEVNOLDS ESOURE	13 14		
14 15	TINA DUCHARME REYNOLDS, ESQUIRE	15		
16	Dickstein Shapiro LLP 1825 Eye Street, N.W.	16		
17	Washington, D.C. 20006	17		
18	(202) 420-4114	18		
110	(202) 720 7117			
19		119		
19 20		19 20		
20		20		
	(CONTINUED)	20		

# EXHIBIT R



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	) MDL NO. 1456
AVERAGE WHOLESALE PRICE LITIGATION	) CIVIL ACTION: 01-CV-12257-PBS
	) Judge Patti B. Saris
THIS DOCUMENT RELATES TO ALL CASES IN MDL NO. 1456. <sup>1</sup>	Chief Magistrate Judge Marianne B. Bowler
	<i>)</i> )

### CROSS-NOTICE OF DEPOSITION OF JOHN HOOVER

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively, "Abbott") hereby cross-notices the deposition of John Hoover for purposes of the above-captioned action. This deposition has been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida, Case No. 06-21303-CIV-ASG, and now part of MDL 1456 in the United States District Court for the District of Massachusetts (the "DOJ suit"). A copy of the notice of deposition in the DOJ suit is attached as Exhibit A.

Mr. Hoover's deposition will take place at Jones Day, 51 Louisiana Ave., N.W., Washington, D.C., 20001-2113 on December 18, 2007 beginning at 9:00 a.m. The deposition will take place before a notary public, or any other officer authorized to administer oaths. The deposition will be taken upon cross-examination.

The deposition will be recorded by stenographic and/or sound and visual means.

Arrangements will be made so that counsel may participate by telephone if they wish. The

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: December 4, 2007 /s/ Brian J. Murray

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, IL 60601 Tel: (312) 782-3939 Fax: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1620635v1

# **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITION OF JOHN HOOVER to be served upon all counsel of record electronically via LexisNexis, this 4th day of December, 2007.

/s/ Jeremy P. Cole Jeremy P. Cole

# **EXHIBIT A**

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	) MDL NO. 1456
AVERAGE WHOLESALE PRICE	)
LITIGATION	) CIVIL ACTION: 01-CV-12257-PBS
	)
	) Judge Patti B. Saris
THIS DOCUMENT RELATES TO	)
U.S. ex rel. Ven-A-Care of the Florida Keys,	) Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc., et al.	)
No. 06-CV-11337-PBS	

# NOTICE OF DEPOSITION OF JOHN HOOVER

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of John Hoover.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Ave., N.W., Washington, D.C. 20001-2113, on December 18, 2007 beginning at 9:00 a.m. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: November 30, 2007 /s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601

Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF JOHN HOOVER to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 30th day of November, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

# Pending in: IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc., et al. et al., v. Abbott Laboratories, Inc., et al. Pending in: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS MDL NO. 1456 Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257 Judge Patti B. Saris Magistrate Judge Marianne B. Bowler SUBPOENA DUCES TECUM

TO: John Hoover	
Care of:	
Gejaa Gobena, Esq.	
Patrick Henry Building	
601 D Street, N.W.	
Room 9028	
Washington, D.C. 20004	
YOU ARE COMMANDED to appear in the United Sta	tes District Court at the place, date, and time specified below
to testify in the above case.	
PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME
YOU ARE COMMANDED to appear at the place, date deposition in the above case.	, and time specified below to testify at the taking of a
PLACE OF DEPOSITION	DATE AND TIME
Jones Day	
51 Louisiana Avenue, N.W.	December 18, 2007 at 9:00 AM
Washington, D.C. 20001	
YOU ARE COMMANDED to produce and permit inspe	ction and copying of the following documents or objects at the
place, date, and time specified below (list documents or obj	ects):
Please see attached Exhibit A	
PLACE	DATE AND TIME
YOU ARE COMMANDED to permit inspection of the	following premises at the date and time specified below.
PREMISES	DATE AND TIME
Any organization not a party to this suit that is subpos	enaed for the taking of a deposition shall designate one or
more officers directors, or managing agents, or other person	ons who consent to testify on its behalf, and may set forth, for
each person designated, the matters on which the person w	vill testify. Federal Rules of Civil Procedure, 30(b)(6).
ISSUING OFFICER SIGNATURE AND TITLE ANDICATE IF ATTORNEY FOR PLA	AINTIFF OR DEFENDANT) DATE

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: R. Christopher Cook, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington, DC

20001 (202) 879-3939

November 30, 2007

# (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

### (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

### EXHIBIT A

# **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

## **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations,

facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT R-1**

# Hoover, John W

	1	IN THE SUPERIOR COURT FOR THE S	STATE OF ALASKA
	2	THIRD JUDICIAL DISTRICT AT	ANCHORAGE
	3		x
	4	STATE OF ALASKA,	:
	5	Plaintiff,	: Case No.
CI	6	VS.	: 3AN-06-12297
CI	7	ABBOTT LABORATORIES and DEY, INC.,	
	8	Defendants.	
	9		X
	10		
ALABAMA	11	IN THE CIRCUIT COURT FOR MONTGOMER	RY COUNTY,
	12		x
	13	In the Matter of:	:
	14		:
	15	ALABAMA MEDICAID PHARMACEUTICAL	: Master Docket
	16	AVERAGE WHOLESALE PRICE LITIGATION	l:
cv-2005-	17 219		x No.
	18	This Document Relates to:	:
	19		:
	20	State of Alabama vs.	:
	21	Abbott Laboratories, Inc.	:
	22		x
		Page 1	

# Hoover, John W

	1	IN THE CIRCUIT COURT OF THE	FIRST CIRCUIT
	2	STATE OF HAWAI	II
	3		x
	4	STATE OF HAWAII,	:
	5	Plaintiff,	: Case No.
EEH	6	VS.	: 06-1-0720-04
	7	ABBOTT LABORATORIES, et al.,	: Judge Eden
	8	Defendants.	: Elizabeth Hifo
	9		x
	10		
	11		
	12	IN THE DISTRICT COURT OF THE FO	OURTH JUDICIAL
	13	DISTRICT OF THE STATE OF IDAHO,	, IN AND FOR THE
	14	COUNTY OF ADA	
	15		x
	16	STATE OF IDAHO,	:
	17	Plaintiff,	: Case No.
	18	VS.	: CV OC 0701846
	19	ABBOTT LABORATORIES,	:
	20	Defendant.	:
		Page 2	

1	IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2	COUNTY DEPARTMENT, CHANCERY DIVISION
3	x
4	THE PEOPLE OF THE STATE OF ILLINOIS,:
5	Plaintiff, : Case No.
6	vs. : 05 CH 02474
7	ABBOTT LABORATORIES, et al., :
8	Defendants. :
9	x
10	
11	
12	COMMONWEALTH OF KENTUCKY
13	FRANKLIN CIRCUIT COURT - DIV. II
14	CIVIL ACTION NO. 03-CI-1134
15	x
16	COMMONWEALTH OF KENTUCKY, :
17	Plaintiff, : Judge Crittenden
18	vs. :
19	ABBOTT LABORATORIES, INC., : Page 3

Saris

15

16

Hoover, John W Defendant. : 20 21 22 4 UNITED STATES DISTRICT COURT 1 2 FOR THE DISTRICT OF MASSACHUSETTS 3 4 IN RE: PHARMACEUTICAL INDUSTRY: MDL NO. 1456 AVERAGE WHOLESALE PRICE : CIVIL ACTION: 5 6 : 01-CV-12257-PBS LITIGATION 7 ----- Judge Patti B. THIS DOCUMENT RELATES TO : Chief Magistrate 8 ALL CASES IN MDL NO. 1456. : Judge Marianne B. 9 10 ----x Bowler 11 12 13 IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI 14 FIRST JUDICIAL DISTRICT

17 Plaintiff, : CIVIL ACTION Page 4

- - - - - - - - - - - - - - - - x

THE STATE OF MISSISSIPPI,

Hoover, John W

NO.

18 vs. : G2005-2021

19 ABBOTT LABORATORIES INC., et al.,:

20 Defendants. :

21 ------x

22

| 1  | UNITED STATES DISTRICT COURT                 |
|----|--|
| 2  | FOR THE DISTRICT OF MASSACHUSETTS            |
| 3  | x  |
| 4  | IN RE: PHARMACEUTICAL INDUSTRY: MDL NO. 1456 |
| 5  | AVERAGE WHOLESALE PRICE : Civil Action Nos.  |
| 6  | LITIGATION : 1:07-cv-10270-PBS               |
| 7  | x 1:07-cv-12257-PBS                          |
| 8  | This filing relates to :                     |
| 9  | State of Ohio v. Dey, Inc., :                |
| 10 | et al. : Judge Patti B.                      |
| 11 | Case No. 1:07-cv-10270-PBS : Saris           |
| 12 | x  |
| 13 |  |
| 14 | COURT OF COMMON PLEAS                        |
| 15 | HAMILTON COUNTY, OHIO Page 5                 |

Hoover, John W

6

1 STATE OF NEW YORK 2 SUPREME COURT: COUNTY OF OSWEGO 3 4 COUNTY OF OSWEGO, Plaintiff, : Index No. 5 6 : 06-0697 VS. 7 ABBOTT LABORATORIES, INC. et al.,: 8 Defendants. : 9 10 11 IN THE COMMONWEALTH COURT OF PENNSYLVANIA 12 - - - - - - - - X 13 COMMONWEALTH OF PENNSYLVANIA, : Page 6

```
Hoover, John W
         14
              by THOMAS W. CORBETT, JR. in his :
         15
              capacity as Attorney General of :
         16
              the Commonwealth of Pennsylvania, :
         17
                              Plaintiff,
                                             : No.:
         18
                                               : 212 M.D. 2004
                       VS.
         19
             TAP PHARMACEUTICAL PRODUCTS, INC.,:
         20
              ET AL.,
                              Defendants.
         21
         22
7
          1
              STATE OF SOUTH CAROLINA
                                               : IN THE COURT
OF
          2
              COUNTY OF RICHLAND
                                                : COMMON PLEAS
FOR
          3
                                        - - - x THE FIFTH
          4
              STATE OF SOUTH CAROLINA, and : JUDICIAL
CIRCUIT
          5
              HENRY D. MCMASTER, in his official:
          6
              capacity as Attorney General for :
              the State of South Carolina,
          7
          8
                              Plaintiff, : Case No.:
                       VS.
2006-CP-40-4394
         10
              ABBOTT LABORATORIES, INC.,
                             Page 7
```

Hoover, John W Defendant. : 11 12 13 14 STATE OF NEW YORK 15 SUPREME COURT: COUNTY OF SCHENECTADY 16 COUNTY OF SCHENECTADY, 17 Plaintiff, : Index No. 18 06-0886 19 VS. 20 ABBOTT LABORATORIES INC. et al.,: 21 Defendants: : 22 8

|                     | 8          | Hoover, John W<br>Defendants. :                    |
|---------------------|------------|--|
|                     | 9          | x  |
|                     | 10         | Washington, D.C.                                   |
|                     | 11         | Tuesday, December 18, 2007                         |
|                     | 12         | Videotaped Deposition of JOHN W. HOOVER,           |
| counse <sup>-</sup> | 13<br>l    | a witness herein, called for examination by        |
|                     | 14         | for Abbott Laboratories, in the above-entitled     |
|                     | 15         | matter, pursuant to notice, the witness being duly |
| the                 | 16         | sworn by KAREN YOUNG, a Notary Public in and for   |
| Jones               | 17         | District of Columbia, taken at the offices of      |
|                     | 18         | Day, 51 Louisiana Avenue, Northwest, Washington,   |
|                     | 19         | D.C., at 9:52 a.m. on Tuesday, December 18, 2007,  |
|                     | 20         | and the proceedings being taken down by Stenotype  |
| direct <sup>:</sup> | 21<br>ion. | by KAREN YOUNG, and transcribed under her          |
|                     | 22         |  |
|                     |            |  |
|                     |            |  |
|                     |            |  |
|                     | 9          |  |
|                     |            |  |
|                     |            |  |
|                     | 1          | APPEARANCES:                                       |
|                     | 2          |  |
|                     | 3          | On Behalf of the State of Florida: (by telephone)  |
|                     |            | Page 9   |

|        |    |           | Hoover, John W                                 |
|--------|----|-----------|--|
|        | 4  |           |  |
|        | 5  |           | GRETCHEN WALLACE, ESQ.                         |
| ۰      | 6  |           | State of Florida Attorney General's            |
| Office |    |           |  |
|        | 7  |           | PL-01 The Capitol                              |
|        | 8  |           | Tallahassee, Florida 32399                     |
|        | 9  |           | <pre>gretchen.wallace@myfloridalegal.com</pre> |
|        | 10 |           | (850) 414-3911                                 |
|        | 11 |           |  |
|        | 12 | On Behalf | of the United States of America:               |
|        | 13 |           |  |
|        | 14 |           | GEORGE B. HENDERSON, ESQ.                      |
|        | 15 |           | U.S. Department of Justice                     |
|        | 16 |           | U.S. Attorney's Office                         |
|        | 17 |           | United States Courthouse                       |
|        | 18 |           | 1 Courthouse Way, Suite 9200                   |
|        | 19 |           | Boston, MA 02210                               |
|        | 20 |           | george.henderson2@usdoj.gov                    |
|        | 21 |           | (617) 748-3272                                 |
|        | 22 |           |  |

10

1 APPEARANCES: (CONTINUED)

Page 10

|          | 2  |            | Hoover, John W                           |
|----------|----|------------|--|
|          | 3  | On Behalf  | of the U.S. Department of Health and     |
|          | 4  | Human Serv | vices:                                   |
|          | 5  |            |  |
|          | 6  |            | BRIAN A. KELLEY, ESQ.                    |
| Services | 7  |            | US Department of Health and Human        |
|          | 8  |            | Office of General Counsel, CMS Division  |
|          | 9  |            | 330 Independence Avenue, S.W., Room 5345 |
|          | 10 |            | Washington, D.C. 20201                   |
|          | 11 |            | brian.kelley@hhs.gov                     |
|          | 12 |            | (202) 205-8702                           |
|          | 13 |            |  |
|          | 14 | On Behalf  | of Abbott Laboratories:                  |
|          | 15 |            |  |
|          | 16 |            | SEAN P. MALONE, ESQ.                     |
|          | 17 |            | Jones Day                                |
|          | 18 |            | 51 Louisiana Avenue, Northwest           |
|          | 19 |            | Washington, D.C. 20001-2113              |
|          | 20 |            | SPMALONE@JONESDAY.COM                    |
|          | 21 |            | (202) 879-3939                           |
|          | 22 |            |  |

| 1                | APPEARANCES: (CONTINUED)                  |
|------------------|---|
| 2                |   |
| 3                | On Behalf of Dey, Inc., Dey, L.P.,        |
| 4                | and Dey, L.P. Inc.:                       |
| 5                |   |
| 6                | MARISA A. SZELAG, ESQ.                    |
| 7                | Kelley Drye & Warren LLP                  |
| 8                | 101 Park Avenue                           |
| 9                | New York, New York 10178                  |
| 10               | mszelag@kelleydrye.com                    |
| 11               | (212) 808-7697                            |
| 12               |   |
| 13<br>telephone) | On Behalf of the State of California: (by |
| 14               |   |
| 15               | ELISEO SISNEROS, ESQ.                     |
| 16               | Bureau of Medical Fraud & Elder Abuse     |
| 17               | Civil Prosecutions Unit                   |
| 18               | 110 West A Street, #1100                  |
| 19               | San Diego, California 92101               |
| 20               | eliseo.sisneros@doj.ca.gov                |
| 21               | (619) 688-6043                            |
| 22               |   |
|                  |   |

| 1  | APPEARANCES: (CONTINUED)                          |
|----|---|
| 2  |   |
| 3  | On Behalf of the State of Alabama: (by telephone) |
| 4  |   |
| 5  | H. CLAY BARNETT, III, ESQ.                        |
| 6  | PAUL LYNN, ESQ.                                   |
| 7  | Beasley, Allen, Crow, Methvin,                    |
| 8  | Portis & Miles, P.C.                              |
| 9  | 218 Commerce Street                               |
| 10 | Montgomery, Alabama 36104                         |
| 11 | clay.barnett@beasleyallen.com                     |
| 12 | (800) 898-2034                                    |
| 13 |   |
| 14 | On Behalf of Bristol-Myers Squibb: (by telephone) |
| 15 |   |
| 16 | DIANNE M. PETERSON, ESQ.                          |
| 17 | Hogan & Hartson LLP                               |
| 18 | 875 Third Avenue                                  |
| 19 | New York, New York 20022                          |
| 20 | dmpeterson@hhlaw.com                              |
| 21 | jpfeingold@hhlaw.com                              |
| 22 | (212) 918-3636                                    |

13

| 1  | APPEARANCES: (CONTINUED)                        |
|----|---|
| 2  |   |
| 3  | On Behalf of Roxane Laboratories and Boehringer |
| 4  | <pre>Ingelheim: (by telephone)</pre>            |
| 5  |   |
| 6  | JARED HECK, ESQ.                                |
| 7  | Kirkland & Ellis LLP                            |
| 8  | 200 East Randolph Drive                         |
| 9  | Chicago, Illinois 60601-6636                    |
| 10 | jheck@kirkland.com                              |
| 11 | (312) 469-7087                                  |
| 12 |   |
| 13 | On Behalf of Schering-Plough Corporation,       |
| 14 | Schering Corporation and Warrick                |
| 15 | Pharmaceuticals Corporation: (by telephone)     |
| 16 |   |
| 17 | C. SCOTT JONES, ESQ.                            |
| 18 | Locke, Liddell & Sapp                           |
| 19 | 2200 Ross Avenue, Suite 2200                    |
| 20 | Dallas, Texas 75201                             |
| 21 | sjones@lockeliddell.com                         |
| 22 | (214) 740-8594                                  |

| Т  | APPEARANCES:  | (CON I INUI | ED)          |
|----|---------------|-------------|--------------|
| 2  |               |             |              |
| 3  | ALSO PRESENT: |             |              |
| 4  |               |             |              |
| 5  | Міа           | Marbury,    | Videographer |
| 6  |               |             |              |
| 7  |               |             |              |
| 8  |               |             |              |
| 9  |               |             |              |
| 10 |               |             |              |
| 11 |               |             |              |
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| 16 |               |             |              |
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| 18 |               |             |              |
| 19 |               |             |              |
| 20 |               |             |              |
| 21 |               |             |              |
| 22 |               | Page 15     |              |
|    |               | U4114 17    |              |

|      | 1  | CONTENTS                                   |
|------|----|--|
|      | 2  |  |
| PAGE | 3  | THE WITNESS: JOHN W. HOOVER                |
| 019  | 4  | Examination By Mr. Malone                  |
| 161  | 5  | Examination By Ms. Szelag                  |
| 198  | 6  | Examination By Mr. Heck                    |
| 217  | 7  | Examination By Mr. Henderson               |
|      | 8  |  |
|      | 9  |  |
|      | 10 | EXHIBITS                                   |
| PAGE | 11 | NUMBER DESCRIPTION                         |
|      | 12 | Exhibit Abbott 507-Notice of Deposition of |
| 056  | 13 | John Hoover                                |
|      | 14 | Exhibit Abbott 508-Centers for Medicare &  |
| 086  | 15 | Medicaid Services Web Site                 |
|      | 16 | Exhibit Abbott 509-Medicaid Program Budget |
|      |    | Page 16                                    |

# **EXHIBIT S**



# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| IN RE PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE<br>LITIGATION | ) ) MDL No. 1456 ) Civil Action No. 01-12257-PBS |
|--|--|
| THIS DOCUMENT RELATES TO:  | ) Judge Patti B. Saris                           |
| ALL ACTIONS <sup>1</sup>   | ) Magistrate Judge Marianne B. Bowler            |
|  | )  |

## CROSS-NOTICE OF DEPOSITION OF RICHARD MORRIS

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Schering Corporation ("Schering"), Schering Plough Corporation ("Schering Plough"), and Warrick Pharmaceuticals Corporation ("Warrick")<sup>2</sup> hereby cross-notice the deposition of Richard Morris for purposes of all cases pending in MDL No. 1456.

On August 8, 2007, attorneys for Abbott Laboratories, Inc. noticed the deposition of Mr. Morris for purposes of *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, No. 06-CV-11337-PBS, a matter that is currently a part of MDL No. 1456. This notice is attached hereto. Through this cross-notice, counsel are hereby informed that the deposition of Mr. Morris will also be proceeding for purposes of all other cases pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>1</sup> As explained herein, this cross-notice regards all actions pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>2</sup> This cross-notice, which is being served for purposes of a number of actions pending in MDL No. 1456, is only served in a particular action on behalf of those entities that have appeared, been named, and been served in that particular action. To the extent that Schering, Schering Plough, or Warrick have not appeared, been served, or been named in a particular action, this notice does not constitute an appearance, consent to service, or consent to joinder

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Microtel Inns & Suites, 215 Collins Industrial Way, Lawrenceville, Georgia on August 29, 2007 beginning at 8:30 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for the deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

By attorneys,

/s/ Eric P. Christofferson

John T. Montgomery (BBO#352220) Steven A. Kaufman (BBO#262230) Eric P. Christofferson (BBO#654087)

Ropes & Gray LLP One International Place Boston, Massachusetts 02110-2624

(617) 951-7000

Attorneys for Schering Corporation, Schering-Plough Corporation, and Warrick Pharmaceuticals Corporation

Dated: August 13, 2007

# **CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Jobe G. Danganan
Jobe G. Danganan

# UNITED STATES DISTRICT COURT OR THE DISTRICT OF MASSACHUSETTS

| FOR THE DISTRICT OF MASSACHUSETTS            |   |   |  |  |
|--|---|---|--|--|
| IN RE: PHARMACEUTICAL INDUSTRY               | ) | MDL NO. 1456                              |  |  |
| AVERAGE WHOLESALE PRICE                      | ) |   |  |  |
| LITIGATION                                   | ) | CIVIL ACTION: 01-CV-12257-PBS             |  |  |
|  | ) | Judge Patti B. Saris                      |  |  |
| THIS DOCUMENT RELATES TO                     | ) |   |  |  |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) | Chief Magistrate Judge Marianne B. Bowler |  |  |
| Inc. v. Abbott Laboratories, Inc., et al.    | ) |   |  |  |

### NOTICE OF DEPOSITION OF RICHARD MORRIS

No. 06-CV-11337-PBS

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Richard Morris.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Microtel Inns & Suites, 215 Collins Industrial Way, Lawrenceville, Georgia on August 29, 2007 beginning at 8:30 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: August 8, 2007

/s/ David S. Torborg
James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

R. Christopher Cook
David S. Torborg
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF RICHARD MORRIS to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 8th day of August, 2007.

/s/ David S. Torborg
David S. Torborg

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA



IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Pending in:

MDL NO. 1456

THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.

Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257-PBS

Judge Patti B. Saris

|                | Chief Magistrate Judge Marianne B. Bowler                       |  |  |  |  |
|----------------|---|--|--|--|--|
|                |   | SUBPOENA DUCES TECUM   |  |  |  |
| TO:            | Richard Morris  | <b></b>  |  |  |  |
|                | Care of:  |  |  |  |  |
|                | Ana Maria Martinez, Esq.  |  |  |  |  |
|                | Assistant United States Attorney                                |  |  |  |  |
|                | 99 N.E. 4th Street  |  |  |  |  |
|                | Miami, FL 33132   |  |  |  |  |
|                |   | nited States District Court at the place, date, and time   |  |  |  |
|                | ied below to testify in the above case.                         |  |  |  |  |
| PLACE          | EOFTESTIMONY  | COURTROOM  |  |  |  |
| N 107          | OTI ATET CLOSURA ARTESTO /                                      | DATE AND TIME  |  |  |  |
|                | DO ARE COMMANDED to appear at the plusition in the above case.  | ace, date, and time specified below to testify at the taking of  |  |  |  |
|                | OF DEPOSITION   | DATE AND TIME  |  |  |  |
|                | rotel Inns & Suites   |  |  |  |  |
|                | Collins Industrial Way  | August 29, 2007 at 8:30 AM   |  |  |  |
|                | renceville, Georgia   |  |  |  |  |
|                |   | mit inspection and copying of the following documents or   |  |  |  |
| object         | is at the place, date, and time specified bel                   | ow (list documents or objects):  |  |  |  |
| PLACE          | Please see attached Exhibit A                                   |  |  |  |  |
|                |   | DATE AND TIME  |  |  |  |
|                |   |  |  |  |  |
| 7-1            |   |  |  |  |  |
|                | <del>_</del>  | n of the following premises at the date and time specified   |  |  |  |
| below<br>PREMI |   | DATE AND TIME  |  |  |  |
|                |   |  |  |  |  |
|                |   | t is subpoenaed for the taking of a deposition shall raging agents, or other persons who consent to testify on its |  |  |  |
|                |   | nated, the matters on which the person will testify. Federal   |  |  |  |
| Rules          | of Civil Procedure, 30(b)(6).                                   |  |  |  |  |
|                | IG OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNI<br>IDANT) — | Y FOR PLAINTIFF OR DATE  |  |  |  |
| DEFE           | Jackar .  | August 8, 2007   |  |  |  |
| Attor          | ney for Defendant Abbott Laboratories, Inc.                     | _  |  |  |  |
|                | IG OFFICER'S NAME, ADDRESS AND PHONE NUMBER: Davi               | d S. Torborg, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington, D.C.   |  |  |  |

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

#### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance:

- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

### EXHIBIT A

### **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

## **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data

compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT S-1**

|    |                                   |      |                   | Page 1 |
|----|-----------------------------------|------|-------------------|--------|
| 1  | THE UNITED STATES D               | DIST | RICT COURT        |        |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS |      |                   |        |
| 3  |                                   | X    |                   |        |
| 4  | In re: PHARMACEUTICAL             | )    | MDL DOCKET NO.    |        |
| 5  | INDUSTRY AVERAGE WHOLESALE        | )    | CIVIL ACTION      |        |
| 6  | PRICE LITIGATION                  | )    | 01CV12257-PBS     |        |
| 7  |                                   | X    |                   |        |
| 8  |                                   |      |                   |        |
| 9  | IN THE CIRCUIT C                  | COUR | T OF              |        |
| 10 | MONTGOMERY COUNTY                 | 7, A | LABAMA            |        |
| 11 |                                   | X    |                   |        |
| 12 | STATE OF ALABAMA,                 | )    | CASE NUMBER:      |        |
| 13 | Plaintiff,                        | )    | CV-2005-219       |        |
| 14 | vs.                               | )    |                   |        |
| 15 | ABBOTT LABORATORIES, INC.,        | )    |                   |        |
| 16 | et al.,                           | )    |                   |        |
| 17 | Defendants.                       | )    |                   |        |
| 18 |                                   | X    |                   |        |
| 19 |                                   |      |                   |        |
| 20 | VIDEOTAPED DEPOSITION             | OF   | RICHARD L. MORRIS |        |
| 21 | LAWRENCEVII                       | LE,  | GEORGIA           |        |
| 22 | WEDNESDAY, AU                     | JGUS | т 29, 2007        |        |
|    |                                   |      |                   |        |

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Page 2
                                                                                                       Page 4
      Videotaped Deposition of RICHARD L. MORRIS, a
                                                       1
                                                                 APPEARANCES: (CONTINUED)
1
2
    witness herein, called for examination by counsel
                                                       2
    for Defendant Abbott Laboratories in the above-
                                                       3
3
                                                           On Behalf of Ven-A-Care of the Florida Keys, Inc.:
    entitled matter, pursuant to Notice, the witness
                                                       4
    being duly sworn by STEVEN S. HUSEBY, a Notary
                                                       5
                                                                  GARY L. AZORSKY, Esq.
    Public in and for the State of Georgia, taken at
                                                       6
                                                                  Berger & Montague, P.C.
6
    The Microtel Inn, 215 Collins Industrial Way,
                                                       7
7
                                                                  1622 Locust Street
    Lawrenceville, Georgia, at 8:39 a.m., and the
                                                       8
                                                                  Philadelphia, PA 19103
    proceedings being taken down by Stenotype by
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                                                                  (215) 875-3090
    STEVEN S. HUSEBY, CRR, RPR, and transcribed under
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                                                      10
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    his direction.
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                                                      12
                                                           On behalf of the Plaintiff States of HI, ID, KY,
13
                                                      13
                                                           WI, NYC, New York Counties in MDL 1456 other than
14
                                                      14
                                                           Nassau and Orange:
                                                      15
15
16
                                                      16
                                                                  MICHAEL WINGET-HERNANDEZ, ESQ.
17
                                                      17
                                                                  Winget-Hernandez LLP
18
                                                      18
                                                                  3112 Windsor Rd., #228
19
                                                      19
                                                                  Austin, TX 78703
20
                                                      20
                                                                  (512) 474-4095
21
                                                      21
22
                                                      22
                                                           (CONTINUED)
                                                Page 3
                                                                                                       Page 5
1
             APPEARANCES:
                                                       1
                                                                  APPEARANCES: (CONTINUED)
 2
                                                       2
 3
                                                        3
     On Behalf of Abbott Laboratories:
                                                           On Behalf of The State of Florida:
 4
                                                        4
 5
                                                       5
            LOUIS P. GABEL, Esq.
                                                                   MARY S. MILLER, Esq.
            Jones Day
                                                        6
                                                                   Office of the Attorney General
 6
 7
                                                       7
                                                                   PL-01, The Capitol
            51 Louisiana Avenue, N.W.
                                                       8
                                                                   Tallahassee, Florida 32399
8
            Washington, D.C. 20001-2113
9
            (202) 879-3939
                                                       9
                                                                   (850) 414-3600
10
                                                       10
11
                                                      11
12
                                                      12
    On Behalf of SmithKline Beecham Corporation,
                                                           On Behalf of The United States of America:
    d/b/a GlaxoSmithKline:
                                                      13
13
14
                                                      14
                                                                   ANA MARIA MARTINEZ, Esq.
15
            RONALD G. DOVE, JR., Esq.
                                                       15
                                                                   Assistant U.S. Attorney
16
            Covington & Burling, LLP
                                                      16
                                                                   99 N.E. 4th Street
            1201 Pennsylvania Avenue, NW
17
                                                       17
                                                                   Miami, Fl. 33132
18
            Washington, DC 20004-2401
                                                      18
                                                                   (305) 961-9001
            (202) 662-6000
19
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22
                                                      22
     (CONTINUED)
                                                           (CONTINUED)
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|    | Page 6   |    | Page 8  |
|----|--|----|---|
| 1  | APPEARANCES: (CONTINUED)                           | 1  | APPEARANCES: (CONTINUED)                        |
| 2  | · · · · ·  | 2  | ,   |
| 3  | On Behalf of the State of Alabama:                 | 3  | On Behalf of AstraZeneca Pharmaceuticals LP and |
| 4  |  | 4  | AstraZeneca LP:                                 |
| 5  | W. DANIEL "Dee" MILES, III, Esq.                   | 5  |   |
| 6  | Beasley, Allen, Crow, Methvin,                     | 6  | (Appearance via phone)                          |
| 7  | Portis & Miles, P.C.                               | 7  | CATHERYN O'ROURKE, Esq.                         |
| 8  | 218 Commerce Street                                | 8  | Davis Polk & Wardwell                           |
| 9  | Montgomery, AL 36104                               | 9  | 450 Lexington Avenue                            |
| 10 | (334) 269-2343                                     | 10 | New York, NY 10017                              |
| 11 | (00.1) 20.10                                       | 11 | (212) 450-4017                                  |
| 12 |  | 12 | (= 1=) 100 1011                                 |
| 13 | On Behalf of Abbott Laboratories:                  | 13 |   |
| 14 | on Bonan or Abbott Eaboratorios.                   | 14 | On Behalf of Bristol-Myers Squibb Company:      |
| 15 | (Appearance via phone)                             | 15 | on Bonan or Briston injure equipe company       |
| 16 | SARAH P. SPRUILL, Esq.                             | 16 | (Appearance via phone)                          |
| 17 | Haynsworth Sinkler Boyd, P.A.                      | 17 | HOA HOANG, Esq.                                 |
| 18 | 1201 Main Street                                   | 18 | Hogan & Hartson, LLP                            |
| 19 | 22nd Floor   | 19 | 875 Third Avenue                                |
| 20 | Columbia, South Carolina 29201                     | 20 | New York, NY 10022                              |
| 21 | (803) 540-7854                                     | 21 | (212) 918-3640                                  |
| 22 | (003) 340-7034                                     | 22 | (212) 710 3040                                  |
|    |  |    |   |
|    | Page 7   |    | Page 9  |
| 1  | APPEARANCES: (CONTINUED)                           | 1  | APPEARANCES: (CONTINUED)                        |
| 2  | ,  | 2  | ,   |
| 3  | On Behalf of Schering Corporation, Schering-Plough | 3  | On Behalf of Barr Laboratories, Inc.:           |
| 4  | Corporation, and Warrick Pharmaceuticals           | 4  |   |
| 5  | Corporation:                                       | 5  | (Appearance via phone)                          |
| 6  | ·  | 6  | JUDSON D. BROWN, Esq.                           |
| 7  | (Appearance via phone)                             | 7  | Kirkland & Ellis LLP                            |
| 8  | GINGER APPLEBERRY, Esq.                            | 8  | 655 Fifteenth Street, NW                        |
| 9  | Locke Liddell & Sapp PLLC                          | 9  | Washington D.C. 20005                           |
| 10 | 2200 Ross Avenue, Suite 2200                       | 10 | (202) 879-5082                                  |
| 11 | Dallas, Texas 75201                                | 11 | ` ,   |
| 12 | (214) 740-8459                                     | 12 |   |
| 13 | • •  | 13 | On Behalf of Aventis Pharmaceuticals Inc.:      |
| 14 |  | 14 |   |
| 15 | On Behalf of Sandoz, Inc.:                         | 15 | (Appearance via phone)                          |
| 16 | ·  | 16 | TIFFANY WESTPHAL KILLOREN, Esq.                 |
| 17 | (Appearance via phone)                             | 17 | Shook, Hardy & Bacon L.L.P.                     |
| 18 | THOMAS M. BIESTY, Esq.                             | 18 | 2555 Grand Blvd.                                |
| 19 | White & Case LLP                                   | 19 | Kansas City, Missouri 64108                     |
| 20 | 1155 Avenue of the Americas                        | 20 | (816) 474-6550                                  |
| 21 | New York, New York 10036-2787                      | 21 | ` '   |
| 22 | (212) 819-8713                                     | 22 | (CONTINUED)                                     |
| 22 | ( /  |    |   |

|    | Page 10  |          | Page 12   |  |
|----|--|----------|---|--|
| 1  | APPEARANCES: (CONTINUED)                           | 1        | APPEARANCES: (CONTINUED)                          |  |
| 2  | ,  | 2        | ,   |  |
| 3  | On Behalf of The Centers for Medicare &            | 3        | On Behalf of Roxanne Laboratories and             |  |
| 4  | Medicaid Services                                  | 4        | Boehringer Ingelheim:                             |  |
| 5  | Wedicald Services                                  | 5        | Boeninger ingenenn.                               |  |
|    | (Annogranco via nhono)                             | 6        | EDIC T CODTNED For                                |  |
| 6  | (Appearance via phone)<br>LESLIE M. STAFFORD, Esq. | 7        | ERIC T. GORTNER, Esq.<br>Kirkland & Ellis LLP     |  |
| 7  | ·  |          |   |  |
| 8  | 7500 Security Boulevard                            | 8        | 200 East Randolph Drive                           |  |
| 9  | Mail Stop C2-05-23                                 | 9        | Chicago, Illinois 60601-6636                      |  |
| 10 | Baltimore, MD 21244                                | 10       | (312) 861-2000                                    |  |
| 11 | (410) 786-9655                                     | 11       |   |  |
| 12 |  | 12       |   |  |
| 13 | On Behalf of Dey, Inc., Dey, L.P., Dey L.P., Inc., | 13       |   |  |
| 14 | Mylan Laboratories, Inc., Mylan Pharmaceuticals,   | 14       |   |  |
| 15 | Inc., UDL Laboratories, Inc.:                      | 15       |   |  |
| 16 |  | 16       |   |  |
| 17 | (Appearance via phone)                             | 17       |   |  |
| 18 | CLIFF KATZ, Esq.                                   | 18       |   |  |
| 19 | Kelley Drye & Warren LLP                           | 19       |   |  |
| 20 | 101 Park Avenue                                    | 20       |   |  |
| 21 | New York, NY 10178                                 | 21       |   |  |
| 22 | (212) 808-7609                                     | 22       |   |  |
|    |  |          |   |  |
|    | Page 11  |          | Page 13   |  |
| 1  | APPEARANCES: (CONTINUED)                           | 1        | INDEX   |  |
| 2  | ,  | 2        |   |  |
| 3  | On Behalf of Baxter Healthcare Corporation:        | 3        | WITNESS: RICHARD L. MORRIS PAGE                   |  |
| 4  | '  | 4        |   |  |
| 5  | (Appearance via phone)                             | 5        | EXAMINATION BY MR. GABEL 021                      |  |
| 6  | JASON D. WALLACH, Esq.                             | 6        | EXAMINATION BY MR. MILES207                       |  |
| 7  | Dickstein, Shapiro LLP                             | 7        | EXAMINATION BY MR. HERNANDEZ 224                  |  |
| 8  | 1825 Eye Street, N.W.                              | 8        | EXAMINATION BY MR. AZORSKY 226                    |  |
| 9  | Washington, D.C. 20006                             | 9        | EXAMINATION BY MR. DOVE                           |  |
| 10 | (202) 420-2200                                     | 10       | FURTHER EXAMINATION BY MR. MILES                  |  |
| 11 | (202) 120 2200                                     | 11       | FURTHER EXAMINATION BY MR. DOVE                   |  |
| 12 |  | 12       | . S   |  |
| 13 | On Behalf of the State of California:              | 13       |   |  |
|    | On benail of the State of California.              | 14       | EXHIBITS  |  |
| 14 | STEVE DOSS For                                     | 15       | NUMBER DESCRIPTION PAGE                           |  |
| 15 | STEVE ROSS, Esq.                                   |          | Exhibit Abbott 264 - Resume of Richard Morris 055 |  |
| 16 | Attorney General's Office                          | 16       |   |  |
| 17 | California Department of Justice                   | 17       | Exhibit Abbott 265 - ABT-DOJ 0300421 to 422 063   |  |
| 18 | P.O. Box 944255                                    | 18       | Exhibit Abbott 266 - ABT-DOJ 0300434 to 436 063   |  |
| 19 | Sacramento, CA 94244-2550                          | 19       | Exhibit Abbott 267 - Excerpt from Federal         |  |
|    | (916) 322-3360                                     | 20       | Register Volume 39,                               |  |
| 20 |  | 24       | Neural and OOO Date of                            |  |
| 21 | •  | 21       | Number 230, Dated                                 |  |
|    | (CONTINUED)  | 21<br>22 | Number 230, Dated<br>November 27, 1974 080        |  |

# **EXHIBIT T**



# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| IN RE PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE<br>LITIGATION | ) ) ) MDL No. 1456 ) Civil Action No. 01-12257-PBS |
|--|--|
| THIS DOCUMENT RELATES TO:  | ) Judge Patti B. Saris                             |
| ALL ACTIONS <sup>1</sup>   | ) Magistrate Judge Marianne B. Bowler              |
|  | ,<br>)   |

### CROSS-NOTICE OF DEPOSITION OF ROBERT NIEMANN

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Schering Corporation ("Schering"), Schering Plough Corporation ("Schering Plough"), and Warrick Pharmaceuticals Corporation ("Warrick")<sup>2</sup> hereby cross-notice the deposition of Robert Niemann for purposes of all cases pending in MDL No. 1456.

On August 22, 2007, attorneys for Abbott Laboratories, Inc. noticed the deposition of Mr. Niemann for purposes of *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, No. 06-CV-11337-PBS, a matter that is currently a part of MDL No. 1456. This notice is attached hereto. Through this cross-notice, counsel are hereby informed that the deposition of Mr. Niemann will also be proceeding for purposes of all other cases pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>1</sup> As explained herein, this cross-notice regards all actions pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>2</sup> This cross-notice, which is being served for purposes of a number of actions pending in MDL No. 1456, is only served in a particular action on behalf of those entities that have appeared, been named, and been served in that particular action. To the extent that Schering, Schering Plough, or Warrick have not appeared, been served, or been named in a particular action, this notice does not constitute an appearance, consent to service, or consent to joinder

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the Centers for Medicare and Medicaid Services, 7111 Security Boulevard, Room B-310, Baltimore, MD on September 14, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for the deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

By attorneys,

/s/ Jobe G. Danganan

John T. Montgomery (BBO#352220) Steven A. Kaufman (BBO#262230) Daniel J. Bennett (BBO#663324) Jobe G. Danganan (BBO#660446) Ropes & Gray LLP One International Place Boston, Massachusetts 02110-2624

(617) 951-7000

Attorneys for Schering Corporation, Schering-Plough Corporation, and Warrick Pharmaceuticals Corporation

Dated: August 30, 2007

by Schering, Schering Plough, or Warrick, respectively, in that action. Schering, Schering Plough, and Warrick also do not waive any objection regarding jurisdiction or other defenses, where applicable.

# **CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Jobe G. Danganan
Jobe G. Danganan

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) MDL NO. 1456                             |
|--|--|
| AVERAGE WHOLESALE PRICE                      | )  |
| LITIGATION                                   | ) CIVIL ACTION: 01-CV-12257-PBS            |
|  | )  |
|  | ) Judge Patti B. Saris                     |
| THIS DOCUMENT RELATES TO                     | )  |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) Chief Magistrate Judge Marianne B. Bowle |
| Inc. v. Abbott Laboratories, Inc., et al.    | )  |
| No. 06-CV-11337-PBS                          | )  |

## NOTICE OF DEPOSITION OF ROBERT NIEMANN

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Robert Niemann.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Centers for Medicare & Medicaid Services, 7111 Security Boulevard, Room B-310, Baltimore, Maryland on September 14, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: August 22, 2007

/s/ R. Christopher Cook

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939

Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF ROBERT NIEMANN to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 22nd day of August, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

|  | Pending in:   |  |  |  |  |  |
|--|---|--|--|--|--|--|
| IN RE: PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE LITIGATION   | UNITED STATES DISTRICT COURT<br>FOR THE DISTRICT OF MASSACHUSETTS |  |  |  |  |  |
|  | MDL NO. 1456  |  |  |  |  |  |
| THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.  | Civil Action No. 06-CV-11337-PBS<br>Lead Case No. 01-CV-12257-PBS |  |  |  |  |  |
|  | Judge Patti B. Saris  |  |  |  |  |  |
|  | Chief Magistrate Judge Marianne B. Bowler                         |  |  |  |  |  |
|  | SUBPOENA DUCES TECUM  |  |  |  |  |  |
| Laurie Oberembt, Esq. U.S. Department of Justice 601 D Street, N.W. Washington, D.C. 20004  YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case. |   |  |  |  |  |  |
| PLACE OF TESTIMONT   | DATE AND TIME   |  |  |  |  |  |
|  | ate, and time specified below to testify at the taking of         |  |  |  |  |  |
| a deposition in the above case.  PLACE OF DEPOSITION  Centers for Medicare and Medicaid Services 7111 Security Boulevard, Room B-310  Baltimore, Maryland 21244  | DATE AND TIME September 14, 2007 at 9:00 AM                       |  |  |  |  |  |
| YOU ARE COMMANDED to produce and permit in objects at the place, date, and time specified below (list Please see attached Exhibit A  |   |  |  |  |  |  |
| PLACE  | DATE AND TIME   |  |  |  |  |  |
| YOU ARE COMMANDED to permit inspection of the below.   | he following premises at the date and time specified              |  |  |  |  |  |
| PREMISES   | DATE AND TIME   |  |  |  |  |  |
| Any organization not a party to this suit that is su designate one or more officers, directors, or managing behalf, and may set forth, for each person designated, Rules of Civil Procedure, 30(b)(6).                                 | g agents, or other persons who consent to testify on its          |  |  |  |  |  |
| ISSUING OFFICER SENATURE AND TITLE (INDICATE IF ATTORNEY FOR I DEFENDANT)  Attorney for Defendant Apport Laboratories, Inc.  | August 22, 2007   |  |  |  |  |  |
| ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: R. Christoph   | ner Cook, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington,   |  |  |  |  |  |

#### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

### (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

### EXHIBIT A

## **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data

compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# EXHIBIT T-1

# Case 1:01-cv-12257-PBS Document 6436-3 Filed 08/28/09 Page 146 of 305

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| 1  |   | Page 1 |
|----|---|--------|
| 2  | UNITED STATES DISTRICT COURT                      |        |
| 3  | FOR THE DISTRICT OF MASSACHUSETTS                 |        |
| 4  | x   |        |
| 5  | IN RE: PHARMACEUTICAL : MDL NO. 1456              |        |
| 6  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION         |        |
| 7  | PRICE LITIGATION : 01-CV-12257-PBS                |        |
| 8  | THIS DOCUMENT RELATES TO :                        |        |
| 9  | U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris |        |
| 10 | the Florida Keys, Inc. :                          |        |
| 11 | v. :  |        |
| 12 | Abbott Laboratories, Inc., : Chief Magistrate     |        |
| 13 | No. 06-CV-11337-PBS : Judge Marianne B.           |        |
| 14 | x Bowler  |        |
| 15 | Baltimore, Maryland                               |        |
| 16 | Friday, September 14, 2007                        |        |
| 17 |   |        |
| 18 | Videotaped Telephone Deposition of ROBERT NIEMANN |        |
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| 20 |   |        |
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Niemann, Robert September 14, 2007
Baltimore, MD

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Page 2
                                                                                         Page 4
           IN THE CIRCUIT COURT OF
                                                1
                                                      IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
1
2
                                                2
           MONTGOMERY COUNTY, ALABAMA
                                                             STATE OF HAWAII
3
                                                4 STATE OF HAWAII,
4
  STATE OF ALABAMA,
5
      Plaintiff,
                                                5
                                                        Plaintiff,
                  : Case No.: CV-05-219
                                                6
                                                                   :Case No. 06-10720-04-EEH
6
                                               7 ABBOTT LABORATORIES, et al., :Judge Eden Elizabeth
7
   ABBOTT LABORATORIES, INC., : Judge Charles Price
                                                  Defendants. :Hifo
8
9
      Defendants.
                                                9
                                                  ----X
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  - - - - - - - - - - - X
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1
      IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
                                                            COMMONWEALTH OF KENTUCKY
                                                1
                                                         FRANKLIN CIRCUIT COURT - DIVISION II
2
         IN AND FOR LEON COUNTY, FLORIDA
                                                2
3 THE STATE OF FLORIDA
                                                3
                                                            CIVIL ACTION NO. 03-CI-1134
4 ex rel.
                                                  ----X
5
  - - - - - - X
                                                 COMMONWEALTH OF KENTUCKY
6 VEN-A-CARE OF THE FLORIDA :
                                                6
                                                           Plaintiff, : Judge Crittenden
                                                7
7 KEYS, INC., a Florida
                                                      VS.
8 Corporation, by and through its :
                                                8
                                                  ABBOTT LABORATORIES, INC. :
  principal officers and directors, :
                                                9
                                                  Defendant.
10 ZACHARY T. BENTLEY and :
                                               10
                                                  ----X
11 T. MARK JONES,
                                               11
    Plaintiffs,
12
                                               12
         : Civil Action
13 vs.
                                               13
14 MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G
                                               14
15 PHARMACEUTICALS INC.; NOVOPHARM : Judge: William
                                               15
16 LTD., SCHEIN PHARMACEUTICAL, INC.;: L. Gary
                                               16
17 TEVA PHARMACEUTICAL INDUSTRIES :
                                               17
18 LTD., TEVA PHARMACEUTICAL USA; :
                                               18
19 and WATSON PHARMACEUTICALS, INC., :
                                               19
20
   Defendants.
                                               20
21 -----x
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Niemann, Robert September 14, 2007

| 1  | Page 6 STATE OF SOUTH CAROLINA: IN THE COURT OF   | 1  | Page 8 APPEARANCES:   |
|--|---|--|---|
| 2  | COUNTY OF RICHMOND : COMMON PLEAS   | 1<br>2   | APPEARANCES.  |
| 3  | : FOR THE FIFTH   | 3  | On Behalf of the United States of America:  |
| 4  | X JUDICIAL DISTRICT   | 4  | LAURIE A. OBEREMBT, ESQ.  |
| 5  | STATE OF SOUTH CAROLINA :   | 5  | U.S. Department of Justice  |
| 6  | and HENRY D. McMASTER in: Case No. 2006-CP-40-4394  | 6  | Civil Division  |
| 7  |   |  |   |
| 8  | his official capacity as:<br>Attorney General for the:  | 7  | 601 D Street, Northwest<br>P.O. Box 261   |
| 9  | State of South Carolina :   | 8<br>9   |   |
| 10   | Plaintiffs, :   | 1  | Washington, D.C. 20044  |
| 11   | VS. :   | 10<br>11   | On Pobalf of the U.S. Department of   |
| 12   | ABBOTT LABORATORIES :   | 12   | On Behalf of the U.S. Department of Health and Human Services:  |
| 13   | Defendant. :  | 13   | LESLIE STAFFORD, ESQ.   |
| 14   | X   |  |   |
| 15   | Λ   | 14<br>15   | U.S. Department of Health and Human Services OGC, CMS Division  |
| 16   |   | 16   | Mail Stop C2-05-23  |
| 17   |   | 17   | 7500 Security Boulevard   |
| 18   |   | 18   | Baltimore, MD 21244-1850  |
| 19   |   | 19   | (410) 786-9655  |
| 20   |   | 20   | (410) 700-7033  |
| 21   |   | 21   |   |
| 22   |   | 22   |   |
|  |   |  |   |
|  | Page 7  |  |   |
| ı  |   |  | Page 9  |
| 1  | STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  | 1  | APPEARANCES (continued)   |
| 1 2  | STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  Branch 9  | 1<br>2   |   |
|  |   |  |   |
| 2  | Branch 9  | 2  | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ.  |
| 3  | Branch 9  | 2 3  | APPEARANCES (continued)  On behalf of the State of California: (Via telephone)  |
| 2<br>3<br>4  | Branch 9X STATE OF WISCONSIN, :   | 2<br>3<br>4  | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ.  |
| 2 3 4 5  | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709   | 2<br>3<br>4<br>5   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants. :             | 2<br>3<br>4<br>5   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants. :             | 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | Branch 9X STATE OF WISCONSIN, :     Plaintiff, :Case No. 04-CV-1709     Vs. : AMGEN, INC., et al, :     Defendants. : | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama:  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants. :             | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ.  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11   | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants.:              | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C.  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants.:              | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants.:              | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North                      |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                                     | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. : AMGEN, INC., et al, : Defendants.:              | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | Branch 9X STATE OF WISCONSIN, :     Plaintiff, :Case No. 04-CV-1709     vs. : AMGEN, INC., et al, :     Defendants.:  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North                      |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | Branch 9X STATE OF WISCONSIN, : Plaintiff, :Case No. 04-CV-1709 vs. :  AMGEN, INC., et al, : Defendants.:             | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | Branch 9  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | Branch 9  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | Branch 9X STATE OF WISCONSIN, :     Plaintiff, :Case No. 04-CV-1709     Vs. :  AMGEN, INC., et al, :     Defendants.: | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | Branch 9  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (continued)  On behalf of the State of California: (Via telephone) RANDAL GLASER, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General California Department of Justice (619) 688-6099  On Behalf of the State of Alabama: ROGER BATES, ESQ. Hand Arendall, L.L.C. 1200 Park Place Tower 2001 Park Place North Birmingham, AL 35203 |

Niemann, Robert September 14, 2007

| _   |  |  |
|---|--|--|
| 1 2   | Page 10 APPEARANCES (continued)  | Page 12 APPEARANCES (continued) 2  |
| 3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22           | On Behalf of the State of Florida: (Via telephone) MARY S. MILLER, ESQ. Office of the Attorney General of Florida PL-01, The Capitol Tallahassee, FL 32399-1050 (850) 414-3600  On Behalf of Ven-a-Care: JOSEPH C. WILSON, ESQ. Cotchett, Pitre & McCarthy San Francisco Airport Office Center 840 Malcolm Road Burlingame, CA 94010 (650) 697-6000  | On Behalf of Sandoz, Inc.: (Via telephone)  AMY KATCHERIAN, ESQ. White & Case LLP 1155 Avenue of the Americas New York, New York 10036-2787 (212) 819-8254  On behalf New York City & All NY Counties other than Orange & Nassau: AARON D. HOVAN, ESQ. Kirby McInerney LLP 830 Third Avenue New York, NY 10022 (212) 371-6600  17 18 19 20 21 22                                   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | Page 11 APPEARANCES (continued)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation:  SCOTT JONES, ESQ. Locke Liddell & Sapp 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 (214) 740-8725  On Behalf of Abbott Laboratories: CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, Northwest Washington, D.C. 20001 (202) 879-3939 | Page 13  APPEARANCES (continued)  On behalf of the States of Wisconsin, Kentucky, Illinois, Missouri: (Via telephone)  P. JEFFREY ARCHIBALD, ESQ. Archibald Consumer Law Office  1914 Monroe Street  Madison, WI 661-8855  On Behalf of Bristol-Myers Squibb: (Via telephone)  SANDHYA KAWATRA, ESQ. Hogan & Hartson LLP  875 Third Avenue New York, New York 10022 (212) 918-3528 |

Niemann, Robert September 14, 2007

|  | D 44   |  | 5 4/   |
|--|--|--|--|
| 1  | Page 14 APPEARANCES (continued)  | 1  | Page 16<br>CONTENTS  |
| 2  | 711 27117111020 (00111111000)  | 2  | ROBERT NIEMANN EXAMINATION   |
| 3  | On Behalf of Dey, Inc. and Dey, L.P. and Mylan:  | 3  | By Mr. Cook 20   |
| 4  | SARAH L. REID, ESQ.  | 4  | ·  |
| 5  | Kelley Drye & Warren LLP   | 5  | Afternoon session - 137  |
| 6  | 101 Park Avenue  | 6  |  |
| 7  | New York, New York 10178   | 7  | EXHIBITS   |
| 8  | (212) 808-7811   | 8  | ABBOTT EXHIBIT NO. PAGE  |
| 9  |  | 9  | Exhibit Abbott 307-34,157 138  |
| 10   | On Behalf of Aventis Pharmaceuticals:  | 10   | Exhibit Abbott 308-Memorandum HHD063-0388 to 0434 165  |
| 11   | JENNIFER H. McGEE, ESQ.  | 11   | Exhibit Abbott 309-7/25/96 Letter HHD063-0377 to 78 180  |
| 12   | Shook, Hardy & Bacon LLP   | 12   | Exhibit Abbott 310-8/5/96 Letter HHC014-0172 to 0189 180   |
| 13   | Hamilton Square  | 13   | Exhibit Abbott 311-4/22/96 Note Seabolt HHC026-0240 248  |
| 14   | 800 14th Street, Northwest, Suite 800  | 14   | Exhibit Abbott 312-12/16/97 Meeting Sign-in sheet 258  |
| 15   | Washington, D.C. 20005-2004  | 15   | HHD051-0516  |
| 16   | (202) 783-8400   | 16   | Exhibit Abbott 313-8/4/2000 Memorandum HHD042-0423 271   |
| 17   |  | 17   | to 0424  |
| 18   |  | 18   | Exhibit Abbott 314-HHC902-0001 274   |
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| 1  | Page 15 APPEARANCES (continued)  | 1  | Page 17<br>PROCEEDINGS   |
| 1 2  | Page 15 APPEARANCES (continued)  | 1 2  |  |
|  |  | -  | P R O C E E D I N G S  |
| 2  | APPEARANCES (continued)  | 2  | PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is  |
| 2 3  | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer   | 2  | PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by  |
| 2<br>3<br>4  | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)  | 2 3 4  | PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re   |
| 2<br>3<br>4<br>5   | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)  ERIC GORTNER, ESQ.  | 2 3 4 5  | PROCEEDINGS THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price   |
| 2<br>3<br>4<br>5<br>6  | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)  ERIC GORTNER, ESQ.  Kirkland & Ellis LLP  | 2 3 4 5  | PROCEEDINGS  THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price litigation, in the United States District Court for  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone) ERIC GORTNER, ESQ. Kirkland & Ellis LLP 200 East Randolph Drive Chicago, Illinois 60601  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | PROCEEDINGS  THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price litigation, in the United States District Court for the District of Massachusetts, MDL number 1456, Civil Action Number 01-CV-12257-PBS, held in the offices of  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11   | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)     ERIC GORTNER, ESQ.     Kirkland & Ellis LLP     200 East Randolph Drive     Chicago, Illinois 60601     (312) 861-2286  On behalf of Baxter Health Care: (Via telephone)     MERLE M. DELANCEY, ESQ.   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | PROCEEDINGS  THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price litigation, in the United States District Court for the District of Massachusetts, MDL number 1456, Civil Action Number 01-CV-12257-PBS, held in the offices of Centers for Medicare & Medicaid Services at 7111 Security Boulevard, Baltimore, Maryland on this date, Friday, September 14th, 2007, at the time indicated on the video screen, 9:18 a.m.  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)     ERIC GORTNER, ESQ.     Kirkland & Ellis LLP     200 East Randolph Drive     Chicago, Illinois 60601     (312) 861-2286  On behalf of Baxter Health Care: (Via telephone)     MERLE M. DELANCEY, ESQ.     Dickstein Shapiro LLP   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | PROCEEDINGS  THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price litigation, in the United States District Court for the District of Massachusetts, MDL number 1456, Civil Action Number 01-CV-12257-PBS, held in the offices of Centers for Medicare & Medicaid Services at 7111 Security Boulevard, Baltimore, Maryland on this date, Friday, September 14th, 2007, at the time indicated on the video screen, 9:18 a.m.  My name is Ellen Hebert. I'm the legal  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (continued)  On Behalf of Roxane Laboratories and Boehringer Ingelheim: (Via telephone)     ERIC GORTNER, ESQ.     Kirkland & Ellis LLP     200 East Randolph Drive     Chicago, Illinois 60601     (312) 861-2286  On behalf of Baxter Health Care: (Via telephone)     MERLE M. DELANCEY, ESQ.     Dickstein Shapiro LLP     1825 Eye Street, N.W.     Washington, D.C. 20006     (202) 420-2282  ALSO PRESENT:     Ellen Hebert, Videographer | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19       | PROCEEDINGS  THE VIDEOGRAPHER: Good morning. This is the video deposition of Robert Niemann taken by counsel for the Defendant in the matter of In Re Pharmaceutical Industry Average Wholesale Price litigation, in the United States District Court for the District of Massachusetts, MDL number 1456, Civil Action Number 01-CV-12257-PBS, held in the offices of Centers for Medicare & Medicaid Services at 7111 Security Boulevard, Baltimore, Maryland on this date, Friday, September 14th, 2007, at the time indicated on the video screen, 9:18 a.m.  My name is Ellen Hebert. I'm the legal video specialist. The court reporter is Sue Ciminelli. We are employed by Henderson Legal Services. Counsel will now introduce themselves and the parties they represent, after which the court reporter will swear in the witness.  MR. COOK: Christopher Cook for Abbott   |

|    |                                 |          |                  | Page 300 |
|----|---------------------------------|----------|------------------|----------|
| 1  | UNITED STATES DISTRICT COURT    |          |                  |          |
| 2  | DISTRICT OF MASSACH             | IUSE     | TTS              |          |
| 3  |                                 | -x       |                  |          |
| 4  | In re: PHARMACEUTICALS INDUSTRY | <u> </u> | MDL No. 1456     |          |
| 5  | AVERAGE WHOLESALE PRICE         | :        | Civil Action     |          |
| 6  | LITIGATION                      | :        | 01-CV-12257-PBS  |          |
| 7  |                                 | _:       |                  |          |
| 8  | THIS DOCUMENT RELATES TO:       | :        | Judge Patti B.   |          |
| 9  | United States of America, ex    | :        | Saris            |          |
| 10 | rel. Ven-a-Care of the Florida  | :        |                  |          |
| 11 | Keys, Inc.,                     | :        |                  |          |
| 12 | vs.                             | :        | Chief Magistrate |          |
| 13 | ABBOTT LABORATORIES, INC.,      | :        | Judge Marianne   |          |
| 14 | No. 06-11337-PBS                | :        | B. Bowler        |          |
| 15 |                                 | -x       |                  |          |
| 16 | Baltin                          | nore     | , Maryland       |          |
| 17 | Thurso                          | lay,     | October 11, 2007 |          |
| 18 |                                 |          |                  |          |
| 19 |                                 |          |                  |          |
| 20 | Continued Videotaped Deposition | ı of     | ROBERT NIEMANN   |          |
| 21 | Volume 2                        |          |                  |          |
| 22 |                                 |          |                  |          |
|    |                                 |          |                  |          |

October 11, 2007

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Page 301
   IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
                                                        IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
                                                  1
2
                                                  2
                                                           IN AND FOR LEON COUNTY, FLORIDA
3
  - - - - - - X
                                                  3 THE STATE OF FLORIDA
4
  STATE OF ALABAMA,
                                                   4
                                                     ex rel.
                                                     ----X
5
         Plaintiff, :
                                                  5
        vs. : Case No.: CV-05-219
                                                    VEN-A-CARE OF THE FLORIDA KEYS. :
7
   ABBOTT LABORATORIES, INC., : Judge Charles Price
                                                  7
                                                    INC., a Florida Corporation, by
                                                    and through its principal officers:
9
        Defendants. :
                                                     and directors, ZACHARY T. BENTLEY :
10
  ----X
                                                  10 and T. MARK JONES,
11
                                                  11
                                                             Plaintiffs,
12
                                                  12
                                                           VS.
                                                                          : Civil Action
13
     IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                                                  13 MYLAN LABORATORIES INC., MYLAN : No.: 98-3032G
14
            STATE OF HAWAII
                                                  14 PHARMACEUTICALS INC., NOVOPHARM : Judge:
15
                                                  15 LTD., SCHEIN PHARMACEUTICAL, INC., : William L.
16
  - - - - - - - - X
                                                  16 TEVA PHARMACEUTICAL INDUSTRIES : Gary
17 STATE OF HAWAII,
                                                  17 LTD., TEVA PHARMACEUTICAL USA; :
18
         Plaintiff, : Case No.
                                                  18 and WATSON PHARMACEUTICALS, INC., :
        vs. : 06-10720-04-EEH
19
                                                  19
                                                             Defendants,
20 ABBOTT LABORATORIES, et al., : Judge Eden
                                                  20
         Defendants. : Elizabeth Hifo
21
                                                  21
22 -----x
                                                  22
                                          Page 302
                                                                                            Page 304
1
            COMMONWEALTH OF KENTUCKY
                                                  1 STATE OF SOUTH CAROLINA : IN THE COURT OF
                                                  2 COUNTY OF RICHMOND : COMMON PLEAS
2
         FRANKLIN CIRCUIT COURT - DIVISION II
 3
                                                   3
                                                                       : FOR THE FIFTH
            CIVIL ACTION NO. 03-CI-1134
                                                  4
4
                                                                       : JUDICIAL DISTRICT
                                                  5
 5
                                                     - - - - - - - - - - - X
    ----X
    COMMONWEALTH OF KENTUCKY, :
                                                  6
                                                    STATE OF SOUTH CAROLINA,
6
7
                                                  7 and HENRY D. McMASTER in his :
             Plaintiff, :
8
                       : Judge Crittenden
                                                     official capacity as Attorney:
           VS.
9
    ABBOTT LABORATORIES, INC., :
                                                  9
                                                     General for the State of South:
                                                  10 Carolina,
10
    Defendant. :
                                                  11
                                                             Plaintiffs, :
11
    ----X
                                                  12
                                                                 : Case No.
12
                                                            VS.
                                                  13 ABBOTT LABORATORIES, : 2006-CP-40-4394
13
                                                  14
14
                                                             Defendant. :
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October 11, 2007

|  | Page 305  |  | Page 307  |
|--|---|--|---|
| 1  | STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  | 1  | APPEARANCES: (CONTINUED)  |
| 2  | Branch 9  | 2  | ,   |
| 3  | X   | 3  | On Behalf of the State of Alabama:  |
| 4  | STATE OF WISCONSIN, :   | 4  | on Bonair or the state of Allabamar   |
| 5  | Plaintiff, :  | 5  | ROGER L. BATES, ESQ.  |
| 6  | vs. : Case No. 04-CV-1709   | 6  | Hand Arendall L.L.C.  |
| 7  | AMGEN, INC., et al., :  | 7  | 1200 Park Place Tower   |
| 8  | Defendants. :   | 8  | 2001 Park Place North   |
| 9  | X   | 9  | Birmingham, Alabama 35203   |
| 10   | Baltimore, Maryland   | 10   | rbates@handarendall.com   |
| 11   | Thursday, October 11, 2007  | 11   | (205) 502-0105  |
| 12   | Continued Videotaped Deposition of ROBERT   | 12   | (203) 302-0103  |
| 13   | NIEMANN, a witness herein, called for examination by  | 13   | On Behalf of Roxane Laboratories and  |
| 14   | counsel for Abbott Laboratories in the  | 14   |   |
| 15   | above-entitled matter, pursuant to notice, the  | 15   | Boehringer Ingelheim:   |
| 16   | witness being duly sworn by KAREN YOUNG, a Notary   | 16   | EDIC CODTNED ESO  |
| 17   | Public in and for the State of Maryland, taken at   | 17   | ERIC GORTNER, ESQ.<br>Kirkland & Ellis LLP  |
| 18   | the offices of the Centers for Medicare & Medicaid  |  |   |
| 19   | Services, 7111 Security Boulevard, Baltimore,   | 18   | 200 East Randolph Drive   |
|  |   | 19   | Chicago, Illinois 60601   |
| 20   | Maryland, at 9:25 a.m. on Thursday, October 11, 2007, and the proceedings being taken down by   | 20   | egortner@kirkland.com   |
| 22   | Stenotype and transcribed by KAREN YOUNG.   | 21   | (312) 861-2285  |
| 22   | Stenotype and transcribed by NAKEN TOONS.   | 22   |   |
|  |   |  |   |
|  | Page 306  |  | Page 308  |
| 1  | Page 306 APPEARANCES:   | 1  | Page 308 APPEARANCES: (CONTINUED)   |
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| 2  | APPEARANCES:  | 2  | APPEARANCES: (CONTINUED)  |
| 2  |   | 2  | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and  |
| 2<br>3<br>4  | APPEARANCES:  On Behalf of the United States of America:  | 2<br>3<br>4  | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick   |
| 2<br>3<br>4<br>5   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ.  | 2<br>3<br>4<br>5   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation:  |
| 2<br>3<br>4<br>5<br>6  | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice   | 2<br>3<br>4<br>5<br>6  | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick   |
| 2<br>3<br>4<br>5<br>6<br>7   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division  | 2<br>3<br>4<br>5<br>6<br>7   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation:  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261 Washington, D.C. 20044  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 sjones@lockeliddell.com   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261 Washington, D.C. 20044 (202) 514-3345   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261 Washington, D.C. 20044 (202) 514-3345   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 sjones@lockeliddell.com   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | APPEARANCES:  On Behalf of the United States of America:  LAURIE A. OBEREMBT, ESQ. U.S. Department of Justice Civil Division Commercial Litigation - Fraud Section 601 D Street, Northwest P.O. Box 261 Washington, D.C. 20044 (202) 514-3345  On Behalf of the State of California: (by telephone)  RITA HANSCOM, ESQ. Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General 1455 Frazee Road, Suite 305 | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | APPEARANCES: (CONTINUED)  On Behalf of Schering-Plough Corporation and Schering Corporation and Warrick Pharmaceuticals Corporation: (by telephone)  C. SCOTT JONES, ESQ. Locke Lord Bissell & Liddell LLP 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201 sjones@lockeliddell.com (214) 740-8761  On Behalf of Abbott Laboratories:  CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, Northwest Washington, D.C. 20001 |
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| 1        | Page 3 APPEARANCES: (CONTINUED)                     | 1        | APPEA | Page 311<br>RANCES: (CONTINUED)                                |
| 3        | On Behalf of Baxter Health Care:                    | 3 4      | On    | Behalf of Aventis Pharmaceuticals:                             |
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| 1 2      | APPEARANCES: (CONTINUED)                            | 1 2      | APPE  | ARANCES: (CONTINUED)   |
| 3        | On Behalf of Sandoz, Inc.:                          | 3        | On    | Behalf of the State of Florida                                 |
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| Exhibit Abbott 342-Fanning letter to Niemann,  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 345-Document, Drug Pricing  Error, HHC007-0464  | position of<br>the defendant<br>Industry<br>his<br>-Care of<br>District<br>, Civil<br>d in the<br>icaid<br>saltimore,<br>ber 11th,<br>eo screen,       |
| Exhibit Abbott 342-Fanning letter to Niemann,  11/13/96, with post-it 409  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 345-Document, Drug Pricing  Error, HHC007-0464 428  Exhibit Abbott 346-Niemann e-mail to Carpenter,  10 Exhibit Abbott 347-Niemann e-mail to Vogel,  Exhibit Abbott 348-Document dated 10/8/98,  Exhibit Abbott 348-Document dated 10/8/98,  Exhibit Abbott 349-Handwritten Notes, 12/8,  HHC007-0378 - HHC007-0379 446  The VIDEOGRAPHER: Good mail is Volume 2 of the continued video degates is volume 2 of the Continued States in the Health Service is Volume 2 of the Continued States in the Health Service is Volume 2 of the Continued States in the United States in the Florida Keys, Inc. versus Abbott        | position of the defendant Industry his -Care of District , Civil d in the icaid Baltimore, ber 11th, eo screen,  |
| Exhibit Abbott 342-Fanning letter to Niemann,  11/13/96, with post-it 409  Exhibit Abbott 343-Fanning letter to Niemann,  Exhibit Abbott 344-Fanning letter to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 344-Fanning fax to Niemann,  Exhibit Abbott 345-Document, Drug Pricing  Exhibit Abbott 345-Document, Drug Pricing  Exhibit Abbott 346-Niemann e-mail to Carpenter,  Exhibit Abbott 347-Niemann e-mail to Vogel,  Exhibit Abbott 348-Document dated 10/8/98,  Exhibit Abbott 349-Handwritten Notes, 12/8,  HHC007-0378 - HHC007-0379 446  Exhibit Abbott 350-Yeh e-mail to Rogan et al.,  Exhibit Abbott 350-Yeh e-mail to Rogan et al.,  Exhibit Abbott 350-Yeh e-mail to Rogan et al.,  THE VIDEOGRAPHER: Good m is Volume 2 of the continued video deg is volume 2 of the continued video deges in the place is volume 2 of the continued video in the matter of In Re Pharmaceutical 7 Average Wholesale Price Litigation. The solution in the matter of In Re Pharmaceutical 6 in the matter of In Re Pharmaceutical 7 | position of the defendant Industry his -Care of District , Civil d in the icaid saltimore, ber 11th, eo screen, the ter is                             |
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# EXHIBIT U



### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) | MDL NO. 1456                              |
|--|---|---|
| AVERAGE WHOLESALE PRICE                      | ) |   |
| LITIGATION                                   | ) | CIVIL ACTION: 01-CV-12257-PBS             |
|  | ) |   |
|  | ) | Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO                     | ) |   |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) | Chief Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc., et al.    | ) |   |
| No. 06-CV-11337-PBS                          | ) |   |

### NOTICE OF DEPOSITION OF LISA PARKER

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Lisa Parker.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of the Center for Medicare & Medicaid Services, 7111 Security Boulevard, Baltimore, Maryland 21244 on June 6, 2007 beginning at 9:00 a.m. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: May 25, 2007

/s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

## **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF LISA PARKER to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 25<sup>th</sup> day of May, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# EXHIBIT U-1

Parker, Lisa June 6, 2007 Baltimore, MD

|    |   | Page 1     |
|----|---|------------|
| 1  | UNITED STATES DISTRICT COURT                      | - <b>3</b> |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS                 |            |
| 3  | x   |            |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456              |            |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:        |            |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS                |            |
| 7  | THIS DOCUMENT RELATES TO :                        |            |
| 8  | U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris |            |
| 9  | the Florida Keys, Inc. v. :                       |            |
| 10 | Abbott Laboratories, Inc., : Chief Magistrate     |            |
| 11 | No. 06-CV-11337-PBS : Judge Marianne B.           |            |
| 12 | x Bowler  |            |
| 13 | IN THE CIRCUIT COURT OF                           |            |
| 14 | MONTGOMERY COUNTY, ALABAMA                        |            |
| 15 | x   |            |
| 16 | STATE OF ALABAMA, :                               |            |
| 17 | Plaintiff, :                                      |            |
| 18 | vs. : Case No.: CV-05-219                         |            |
| 19 | ABBOTT LABORATORIES, INC., : Judge Charles Price  |            |
| 20 | et al.,   |            |
| 21 | Defendants.:                                      |            |
| 22 | x   |            |
|    |   |            |

Parker, Lisa June 6, 2007 Baltimore, MD

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Page 2
1
     IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
                                                    1
                                                               Videotaped Deposition of LISA PARKER, a
2
        IN AND FOR LEON COUNTY, FLORIDA
                                                       witness herein, called for examination by counsel
3
                                                    3
                                                       for Abbott Laboratories in the above-entitled
4
   THE STATE OF FLORIDA
                                                    4
                                                       matter, pursuant to notice, the witness being duly
5
   ex rel.
                                                    5
                                                       sworn by Robert M. Jakupciak, a Notary Public in
                                                       and for the District of Columbia, taken at the
6
  ----X
                                                    6
7 VEN-A-CARE OF THE FLORIDA
                                                    7
                                                        offices of Center for Medicare & Medicaid Services,
  KEYS, INC., a Florida
                                                    8
                                                        7111 Security Blvd., Baltimore, Maryland, 21244, at
9 Corporation, by and through its :
                                                    9
                                                        2:20 p.m., on June 6, 2007, and the proceedings
10 principal officers and directors, :
                                                   10
                                                       being taken down by Stenotype by Robert M.
11 ZACHARY T. BENTLEY and :
                                                       Jakupciak, RPR.
                                                   11
12 T. MARK JONES,
                                                   12
13
            Plaintiffs, :
                                                   13
14
                      : Civil Action
                                                   14
         VS.
15 MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G
                                                   15
16 PHARMACEUTICALS INC.; NOVOPHARM : Judge: William
                                                   16
17 LTD., SCHEIN PHARMACEUTICAL, INC.;: L. Gary
                                                   17
18 TEVA PHARMACEUTICAL INDUSTRIES :
                                                   18
19 LTD., TEVA PHARMACEUTICAL USA; :
                                                   19
20 and WATSON PHARMACEUTICALS, INC., :
                                                   20
21
            Defendants,
                                                   21
22 ----x
                                                   22
                                                                                                 Page 5
1
     IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
                                                    1
                                                        APPEARANCES:
2
             STATE OF MISSOURI
                                                    2
   ----X
                                                    3
3
                                                        On behalf of the United States of America:
4 STATE OF MISSOURI, ex rel.,
                                                    4
                                                    5
5
   JEREMIAH W. (JAY) NIXON,
                                                              ANA MARIA MARTINEZ, ESQUIRE
    Attorney General, :
                                                              U.S. Department of Justice
6
                                                    6
                                                    7
7
    and
                                                              99 N.E. 4th Street
8
    MISSOURI DEPARTMENT OF SOCIAL
                                                    8
                                                              Miami, Florida 33132
    SERVICES, DIVISION OF MEDICAL : Case No.:
                                                    9
                                                               (305) 961-9431
    SERVICES,
10
                           : 054-1216
                                                   10
11
                                                   11
                                                        On behalf of the U.S. Department of
             Plaintiffs,
                        : Division No. 31
12
                                                        Health and Human Services:
                                                   12
          VS.
13 DEY INC., DEY, L.P., MERCK KGaA, :
                                                   13
14 EMD, INC., WARRICK
                                                   14
                                                               TROY A. BARSKY, ESQUIRE
15 PHARMACEUTICALS CORPORATION,
                                                   15
                                                               U.S. Department of Health and
16 SCHERING-PLOUGH CORPORATION, and :
                                                   16
                                                              Human Services
17 SCHERING CORPORATION.
                                                   17
                                                              C2-05-23
18
             Defendants,
                                                   18
                                                               7500 Security Blvd.
                                                               Baltimore, Maryland 21244-1850
19 -----x
                                                   19
20
                                                   20
                                                               (410) 786-8873
21
                                                   21
22
                                                   22
                                                        (CONTINUED)
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Parker, Lisa June 6, 2007

Baltimore, MD

|   | Baltimo  | ore, i  | אוט   |
|---|--|---|---|
| 1   | Page 6 APPEARANCES: (CONTINUED)  | 1   | Page 8 APPEARANCES: (CONTINUED)   |
| 2<br>3<br>4   | On behalf of Abbott Laboratories:  | 2<br>3<br>4   | On behalf of KMS New York Counties:   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | LOUIS P. GABEL, ESQUIRE Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001 (202) 879-5411  (The following attorneys present by phone.)  On behalf of Dey Companies and Mylan:  CLIFFORD KATZ, ESQUIRE Kelly Drye & Warren LLP 101 Park Avenue New York, New York 10178 (212) 808-7609  (CONTINUED) | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | MICHAEL WINGET-HERNANDEZ, ESQUIRE Winget-Hernandez, LLC 3112 Windsor Road, #228 Austin, Texas 78703  Also Present Videographer: Conway Barker |
| 1   | Page 7 APPEARANCES: (CONTINUED)  | 1   | Page 9<br>CONTENTS  |
| 2<br>3<br>4<br>5<br>6   | On behalf of Roxane Laboratories and Boehringer-Ingelheim and affiliated entities:  JARED THOMAS HECK, ESQUIRE   | 2<br>3<br>4<br>5<br>6   | THE WITNESS: LISA PARKER PAGE Examination By Mr. Gabel 012  |
| 7<br>8<br>9<br>10   | Kirkland & Ellis LLP<br>200 East Randolph Drive<br>Chicago, Illinois 60601<br>(312) 469-7087   | 7<br>8<br>9<br>10   | E X H I B I T S  NUMBER DESCRIPTION PAGE  Exhibit Abbett 226 Paguaget for Production of   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21                                      | On behalf of Baxter Healthcare Corporation:  TINA DUCHARME REYNOLDS, ESQUIRE Dickstein Shapiro LLP 1825 Eye Street, N.W. Washington, D.C. 20006 (202) 420-4114   | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21                                      | Exhibit Abbott 226-Request for Production of Documents  |
| 22  | (CONTINUED)  | 22  |   |

# **EXHIBIT V**



### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| N RE: PHARMACEUTICAL INDUSTRY                                    | ) MDL NO. 1456                              |
|--|---|
| AVERAGE WHOLESALE PRICE<br>LITIGATION                            | ) CIVIL ACTION: 01-CV-12257-PBS             |
|  | ) Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO ALL CASES IN MDL NO. 1456. <sup>1</sup> | ) Chief Magistrate Judge Marianne B. Bowler |
|  | <i>)</i><br>}                               |

### CROSS-NOTICE OF DEPOSITION OF LARRY REED

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively, "Abbott") hereby cross-notices the deposition of Larry Reed for purposes of the above-captioned action. This deposition has been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida, Case No. 06-21303-CIV-ASG, and now part of MDL 1456 in the United States District Court for the District of Massachusetts (the "DOJ suit"). A copy of the deposition notice in the DOJ suit is attached as Exhibit A.

Mr. Reed's deposition will take place at Hogan & Hartson, 111 South Calvert Street, Baltimore, Maryland on September 26 and 27, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The deposition will take place before a notary public, or any other officer authorized to administer oaths. The deposition will be taken upon cross-examination.

The deposition will be recorded by stenographic and/or sound and visual means.

Arrangements will be made so that counsel may participate by telephone if they wish. The

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: September 14, 2007 /s/ Brian J. Murray

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, IL 60601 Tel: (312) 782-3939 Fax: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1607258v1

2

## **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITION OF LARRY REED to be served upon all counsel of record electronically via LexisNexis, this 14th day of September, 2007.

/s/ Jeremy P. Cole Jeremy P. Cole

# **EXHIBIT A**

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) | MDL NO. 1456                              |
|--|---|---|
| AVERAGE WHOLESALE PRICE                      | ) |   |
| LITIGATION                                   | ) | CIVIL ACTION: 01-CV-12257-PBS             |
|  | ) |   |
|  | ) | Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO                     | ) |   |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) | Chief Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc., et al.    | ) |   |
| No. 06-CV-11337-PBS                          | ) |   |

### NOTICE OF DEPOSITION OF LARRY REED

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Larry Reed.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Hogan & Hartson, 111 South Calvert Street, Baltimore, Maryland on September 26 and 27, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: September 13, 2007 /s/ David S. Torborg

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago Illinois 60601

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

## **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF LARRY REED to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 13th day of September, 2007.

/s/ David S. Torborg
David S. Torborg

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

|  | Pending in:   |
|--|---|
| IN RE: PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE LITIGATION   | UNITED STATES DISTRICT COURT<br>FOR THE DISTRICT OF MASSACHUSETTS   |
| THIS DOOLD TO THE DELLATING TO   | MDL NO. 1456  |
| THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.  | Civil Action No. 06-CV-11337-PBS<br>Lead Case No. 01-CV-12257-PBS   |
|  | Judge Patti B. Saris  |
|  | Chief Magistrate Judge Marianne B. Bowler   |
|  | SUBPOENA DUCES TECUM  |
| Ana Maria Martinez, Esq. United States Attorney's Office 99 N.E. 4 Street, 3rd Floor Miami, Florida 33132  YOU ARE COMMANDED to appear in the United Sepecified below to testify in the above case.  PLACE OF TESTIMONY  YOU ARE COMMANDED to appear at the place, date a deposition in the above case.  PLACE OF DEPOSITION Hogan & Hartson 111 South Calvert Street Baltimore, MD 21202  YOU ARE COMMANDED to produce and permit insobjects at the place, date, and time specified below (list Please see attached Exhibit A | DATE AND TIME  ate, and time specified below to testify at the taking of  DATE AND TIME  September 26 and 27, 2007 at 9:00 AM  spection and copying of the following documents or |
| PLACE  | DATE AND TIME   |
| YOU ARE COMMANDED to permit inspection of the below.  PREMISES   | ne following premises at the date and time specified  |
| Any organization not a party to this suit that is sul  | ppoenaed for the taking of a deposition shall   |
| designate one or more officers, directors, or managing<br>behalf, and may set forth, for each person designated,<br>Rules of Civil Procedure, 30(b)(6).  | the matters on which the person will testify. Federal   |
| ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR P<br>DEFENDANT)  Authorney for Defendant Abbott Laboratories, Inc.   | September 13, 2007  |
| ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Tor   | hory Esq. Jones Day 511 onisiana Ave. N.W. Washington, D.C.   |

20001, (202) 879-3939

### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

#### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

### EXHIBIT A

## **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

## **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data

compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# EXHIBIT V-1

|    |  | Page 1 |  |
|----|--|--------|--|
| 1  | UNITED STATES DISTRICT COURT                       |        |  |
| 2  | OF THE DISTRICT OF MASSACHUSETTS                   |        |  |
| 3  | x  |        |  |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456               |        |  |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION          |        |  |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS                 |        |  |
| 7  | THIS DOCUMENT RELATES TO :                         |        |  |
| 8  | U.S. ex rel. Ven-A-Care of : Judge Patti B.        |        |  |
| 9  | The Florida Keys, Inc., : Saris                    |        |  |
| 10 | Plaintiff, :                                       |        |  |
| 11 | vs. :  |        |  |
| 12 | ABBOTT LABORATORIES, INC., : Chief Magistrate      |        |  |
| 13 | No. 06-CV-11337-PBS : Judge Marianne B.            |        |  |
| 14 | Defendants. : Bowler                               |        |  |
| 15 | x  |        |  |
| 16 | VOLUME I   |        |  |
| 17 | Baltimore, Maryland                                |        |  |
| 18 | Wednesday, September 26, 2007                      |        |  |
| 19 | Videotape Deposition of:                           |        |  |
| 20 | LARRY REED,  |        |  |
| 21 | the witness, was called for examination by counsel |        |  |
| 22 | for the Defendants, pursuant to notice, commencing |        |  |
|    |  |        |  |

Reed, Larry September 26, 2007 Baltimore, MD

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Page 2
                                             1
                                                  IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
   at 9:26 a.m., at the law offices of
2
   Hogan & Hartson, 111 South Calvert Street,
                                                     IN AND FOR LEON COUNTY, FLORIDA
3
   Baltimore, Maryland, before Dawn A. Jaques,
                                             3 THE STATE OF FLORIDA
   Certified Shorthand Reporter and Notary Public in
                                             4 ex rel.
   and for the State of Maryland, when were present
5
                                             5 -----x
   on behalf of the respective parties:
6
                                             6 VEN-A-CARE OF THE FLORIDA :
7
                                             7 KEYS, INC., a Florida
                                             8 Corporation, by and through:
8
                                             9 its principal officers and :
9
10
                                             10 directors, ZACHARY T.
                                             11 BENTLEY and T. MARK JONES, :
11
                                             12
                                                        Plaintiffs, :
12
13
                                             13
                                                     VS.
                                             14 MYLAN LABORATORIES, INC., : Civil Action No.:
14
15
                                             15 MYLAN PHARMACEUTICALS, INC., : 98-3032G
                                             16 NOVOPHARM LTD., SCHEIN :
16
17
                                             17 PHARMACEUTICAL, INC., TEVA : Judge William L.
18
                                             18 PHARMACEUTICAL INDUSTRIES :
                                             19 LTD, TEVA PHARMACEUTICAL USA, :
19
                                             20 WATSON PHARMACEUTICALS, INC., :
20
21
                                             21
                                                        Defendants. :
22
                                             22 -----x
   (CAPTIONS CONTINUED)
                                       Page 3
1
          IN THE CIRCUIT COURT
                                                     FRANKLIN CIRCUIT COURT - DIVISION II
                                             1
2
         OF MONTGOMERY COUNTY, ALABAMA
                                             2
                                                       CIVIL ACTION NO. 03-CI-1134
3
   -----X
                                             3
4
   STATE OF ALABAMA,
                                             4
5
         Plaintiff, : Case No.
                                               COMMONWEALTH OF KENTUCKY, :
           : CV-05-219
6
                                             6
                                                         Plaintiff, :
                                             7
7
   ABBOTT LABORATORIES, :
                                                      vs. : Judge
8
   INC., et al., : Judge Charles
                                             8
                                                                 : Crittenden
9
       Defendants. : Price
                                             9
                                               ABBOTT LABORATORIES, INC., :
                                             10
10
                                                         Defendant. :
   -----X
11
                                             11
                                                 -----X
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13
      IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                                             13
                                                     STATE OF WISCONSIN CIRCUIT COURT
14
         STATE OF HAWAII
                                             14
                                                           DANE COUNTY
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15
                                                            Branch 9
16
   STATE OF HAWAII,
                                             16 -----x
         Plaintiff, : Case No.
17
                                             17 STATE OF WISCONSIN, :
18
        vs. : 06-10720-04-EEH
                                             18
                                                      Plaintiff, :
19 ABBOTT LABORATORIES, et al., : Judge Eden
                                             19
                                                  vs. : Case No.
      Defendants. : Elizabeth Hifo
20
                                             20 AMGEN, INC., et al., : 04-CV-1709
21 -----X
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                                               Defendants. :
22
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Reed, Larry September 26, 2007

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Page 6
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   STATE OF SOUTH CAROLINA: IN THE COURT OF
                                                              APPEARANCES
                                                  1
2
   COUNTY OF RICHMOND :
                               COMMON PLEAS
                                                  2
  -----X FOR THE FIFTH
                                                  3
3
                                                      On behalf of the United States of America:
4
   STATE OF SOUTH CAROLINA: JUDICIAL DISTRICT
                                                  4
   and HENRY D. McMASTER : Case No.
                                                  5
                                                            ANA MARIA MARTINEZ, ESQ.
6 in his official capacity: 2006-CP-40-4394
                                                  6
                                                            United States Department of Justice
    as Attorney General for :
                                                  7
                                                            Assistant United States Attorney
    the State of South
8
                                                            Southern District of Florida
                                                  8
9
    Carolina.
                                                  9
                                                            99 N.E. 4th Street
         Plaintiffs, :
10
                                                            Miami, Florida 33132
                                                 10
11
                                                 11
                                                            TELEPHONE: (305) 961-9431
12
    ABBOTT LABORATORIES, :
                                                            E-MAIL: Ana.maria.martinez@usdoj.gov
                                                 12
13
         Defendant. :
                                                 13
                                                                   -and-
    -----X
14
                                                 14
                                                            JUSTIN DRAYCOTT, ESQ.
15
                                                 15
                                                            United States Department of Justice
16
                                                 16
                                                            Civil Division
17
                                                            P.O. Box 261
                                                 17
18
                                                 18
                                                            Ben Franklin Station
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                                                 19
                                                            Washington, D.C. 20044
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                                                            TELEPHONE: (202) 305-9300
                                                 20
21
                                                 21
                                                            E-MAIL: Justin.draycott@usdoj.gov
22 (CAPTIONS CONTINUED)
                                                 22
                                           Page 7
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1
    STATE OF SOUTH CAROLINA: IN THE COURT OF
                                                  1
                                                      APPEARANCES (Continued:)
2
    COUNTY OF RICHMOND : COMMON PLEAS
                                                  2
3
                   : FOR THE FIFTH
                                                  3
                                                      On behalf of Ven-A-Care:
4
                   : JUDICIAL CIRCUIT
                                                  4
5
                                                  5
   STATE OF SOUTH CAROLINA:
                                                            ROSLYN G. POLLACK, ESQ.
    and HENRY D. McMASTER, :
                                                            Berger & Montague, P.C.
6
                                                  6
                                                  7
                                                            1622 Locust Street
7
    in his official capacity:
    as Attorney General for:
                                                            Philadelphia, Pennsylvania 19103-6305
8
                                                  8
                                                            TELEPHONE: (215) 875-4666
    the State of South : Civil Action No.
                                                  9
10
                : 07-CP-40-0285
                                                            E-MAIL: rpollack@bm.net
    Carolina,
                                                 10
11
           Plaintiff, :
                                                 11
12
                                                 12
                                                      On behalf of U.S. Department of
                  : Civil Action No.
       VS.
    SANDOZ, INC.,
                   : 07-CP-40-0287
                                                      Health and Human Services:
13
                                                 13
14
           Defendant. :
                                                 14
15
    -----X
                                                 15
                                                            LESLIE STAFFORD, ESQ.
16
                                                 16
                                                            U.S. Department of Health and
17
                                                 17
                                                            Human Services
18
                                                 18
                                                            Office of General Counsel, CMS Division
                                                            7500 Security Boulevard
19
                                                 19
                                                            Mail Stop C2-05-23
20
                                                 20
                                                            Baltimore, Maryland 21244-1850
21
                                                 21
                                                            TELEPHONE: (410) 786-9655
22
                                                 22
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Reed, Larry September 26, 2007

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Baltimore, MD
                                             Page 10
                                                                                                Page 12
                                                        APPEARANCES (Continued:)
1
    APPEARANCES (Continued:)
                                                    1
2
                                                    2
 3
                                                    3
    On behalf of City of New York and New York
                                                        On behalf of GlaxoSmithKline:
4
    counties:
                                                    4
5
                                                    5
                                                               SHANKAR DURAISWAMY, ESQ.
                                                               Covington & Burling LLP
6
           MICHAEL WINGET-HERNANDEZ, ESQ.
                                                    6
                                                               1201 Pennsylvania Avenue, N.W.
7
           WINGET-HERNANDEZ LLC
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           Austin, Texas 78703
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           TELEPHONE: (512) 474-4095
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                                                    11
           E-MAIL: Michael@winget-hernandez.com
                                                    12
                                                        On behalf of Bristol-Myers Squibb Company:
12
13
                                                   13
                                                        (via telephone)
14
    On behalf of Abbott Laboratories:
                                                   14
                                                   15
15
                                                               SANDHYA P. KAWATRA, ESQ.
           DAVID S. TORBORG, ESQ.
                                                               Hogan & Hartson LLP
16
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           51 Louisiana Avenue, N.W.
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                                                               New York, New York 10022
           Washington, D.C. 20001-2113
                                                               TELEPHONE: (212) 918-3532
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           TELEPHONE: (202) 879-5562
                                                   20
                                                               E-MAIL: Spkawatra@hhlaw.com
20
21
           E-MAIL: Dstorborg@jonesday.com
                                                   21
22
                                                   22
                                                        (Continued)
                                            Page 11
                                                                                                Page 13
1
    APPEARANCES (Continued:)
                                                    1
                                                        APPEARANCES (Continued:)
                                                    2
2
 3
                                                    3
                                                        On behalf of Baxter Health Care Corporation
    On behalf of Dey, Inc.:
4
                                                    4
                                                        (via telephone):
5
                                                    5
           NEIL MERKL, ESQ.
           Kelley Drye & Warren LLP
                                                    6
                                                              SHAMIR PATEL, ESQ.
6
           101 Park Avenue
                                                    7
7
                                                              Dickstein Shapiro LLP
           New York, New York 10178
                                                    8
                                                              1825 Eye Street, N.W.
8
                                                    9
                                                              Washington, D.C. 20006
9
           TELEPHONE: (212) 808-7811
                                                              TELEPHONE: (202) 420-2728
           E-MAIL: Nmerkl@kelleydrye.com
                                                    10
10
11
                                                   11
                                                              E-MAIL: Patels@dicksteinshapiro.com
12
    On behalf of Roxane Laboratories and
                                                   12
                                                   13
                                                        On behalf of the State of Alabama (via telephone):
13
    Boehringer Ingelheim:
14
                                                   14
                                                   15
15
           ERIC GORTNER, ESQ.
                                                              W. DANIEL (DEE) MILES, III
16
           Kirkland & Ellis LLP
                                                   16
                                                              Beasley, Allen, Crow, Methvin,
                                                              Portis & Miles
17
           200 East Randolph Drive
                                                   17
18
           Chicago, Illinois 60601
                                                   18
                                                              218 Commerce Street
           TELEPHONE: (312) 861-2285
                                                   19
                                                              Post Office Box 4160
19
           E-MAIL: Egortner@kirkland.com
20
                                                   20
                                                              Montgomery, Alabama 36103-4160
                                                              TELEPHONE: (334) 269-2343
21
                                                   21
22
                                                   22
                                                        (Continued)
    (Continued)
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Reed, Larry September 26, 2007

Baltimore, MD Page 14 Page 16 1 APPEARANCES (Continued): 1 I-N-D-E-X 2 2 PAGE: WITNESS: 3 3 LARRY REED On behalf of Sandoz, Inc. (via telephone): 4 4 Examination by Mr. Torborg...... 029 5 DAVID L. KLEINMAN, ESQ. 5 6 White & Case LLP 6 7 1155 Avenue of the Americas 7 E-X-H-I-B-I-T-S 8 New York, New York 10036-2787 8 **NUMBER** DESCRIPTION **PAGE** 9 TELEPHONE: (212) 819-8254 9 Exhibit Abbott 321-Plaintiffs' Rule 26(a)(1) 10 10 Disclosures...... 151 Exhibit Abbott 322-Documentation, Bates Stamp 11 On behalf of the State of California 11 Nos. HHC007-0979 through 80. 231 (via telephone): 12 12 13 13 Exhibit Abbott 323-Documentation, Bates Stamp Nos. TX-ABT\_00013723 14 RITA HANSCOM, ESQ. 14 15 through 32...... 234 15 Bureau of Medi-Cal Fraud & Elder Abuse Office of the Attorney General 16 16 17 California Department of Justice 17 18 TELEPHONE: (619) 688-6099 18 19 19 20 20 21 21 22 (Continued) 22 Page 15 Page 17 1 APPEARANCES (Continued): 1 PROCEEDINGS 2 2 3 On behalf of the State of Florida (via telephone): 3 THE VIDEOGRAPHER: Good morning. This 4 is the video deposition of Larry Reed in the 4 5 5 matter of In Re: Pharmaceutical Industry Average MARY S. MILLER, ESQ. Wholesale Price Litigation, MDL No. 1456, Civil Office of the Attorney General of Florida 6 6 7 PL-01, The Capitol 7 Action No. 01-CV-12257-PVS, in the United States Tallahassee, Florida 32399-1050 8 District Court for the District of Massachusetts. 8 9 9 TELEPHONE: (850) 414-3600 This document relates to U.S. ex rel. 10 Ven-A-Care of Florida Keys, Inc., versus Abbott 10 11 11 Laboratories, Inc., Case No. 06-CV-11337-PBS, held in the offices of Hogan & Hartson at 111 12 12 South Calvert Street, Baltimore, Maryland, on 13 13 14 this date, Wednesday, September 22nd, 2000 --14 correction, Wednesday, September 26th, 2007, at 15 15 the time indicated on the video screen, 9:26 a.m. 16 16 My name is Ellen Heber; I am the legal 17 17 video specialist. The court reporter is Dawn 18 18 Jaques. We are employed by Henderson Legal 19 19 20 20 Services. 21 21 Counsel will now introduce themselves 22 22 and the parties they represent, after which the

September 27, 2007

| ٠  |  | Page 329 |  |
|----|--|----------|--|
| 1  | UNITED STATES DISTRICT COURT                       |          |  |
| 2  | OF THE DISTRICT OF MASSACHUSETTS                   |          |  |
| 3  | x  |          |  |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456               |          |  |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION          |          |  |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS                 |          |  |
| 7  | THIS DOCUMENT RELATES TO :                         |          |  |
| 8  | U.S. ex rel. Ven-A-Care of : Judge Patti B.        |          |  |
| 9  | The Florida Keys, Inc., : Saris                    |          |  |
| 10 | Plaintiff, :                                       |          |  |
| 11 | vs. :  |          |  |
| 12 | ABBOTT LABORATORIES, INC., : Chief Magistrate      |          |  |
| 13 | No. 06-CV-11337-PBS : Judge Marianne B.            |          |  |
| 14 | Defendants. : Bowler                               |          |  |
| 15 | x  |          |  |
| 16 | VOLUME II  |          |  |
| 17 | Baltimore, Maryland                                |          |  |
| 18 | Thursday, September 27, 2007                       |          |  |
| 19 | Continued Videotape Deposition of:                 |          |  |
| 20 | LARRY REED,  |          |  |
| 21 | the witness, was called for examination by counsel |          |  |
| 22 | for the Defendants, pursuant to notice, commencing |          |  |

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Page 330
                                                                                  Page 332
                                             1
                                                 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
   at 9:15 a.m., at the law offices of
   Hogan & Hartson, 111 South Calvert Street,
                                                    IN AND FOR LEON COUNTY, FLORIDA
   Baltimore, Maryland, before Dawn A. Jaques,
3
                                             3 THE STATE OF FLORIDA
   Certified Shorthand Reporter and Notary Public in
                                             4 ex rel.
   and for the State of Maryland, when were present
5
                                             5 -----x
   on behalf of the respective parties:
6
                                             6 VEN-A-CARE OF THE FLORIDA :
7
                                             7 KEYS, INC., a Florida
                                             8 Corporation, by and through:
8
                                             9 its principal officers and :
9
10
                                            10 directors, ZACHARY T.
                                            11 BENTLEY and T. MARK JONES, :
11
                                            12
                                                       Plaintiffs, :
12
13
                                            13
                                                    VS.
                                            14 MYLAN LABORATORIES, INC., : Civil Action No.:
14
15
                                            15 MYLAN PHARMACEUTICALS, INC., : 98-3032G
                                            16 NOVOPHARM LTD., SCHEIN :
16
17
                                            17 PHARMACEUTICAL, INC., TEVA : Judge William L.
18
                                            18 PHARMACEUTICAL INDUSTRIES :
                                            19 LTD, TEVA PHARMACEUTICAL USA, :
19
                                            20 WATSON PHARMACEUTICALS, INC., :
20
21
                                            21
                                                       Defendants. :
22
                                            22 -----x
   (CAPTIONS CONTINUED)
                                                                                  Page 333
                                     Page 331
1
          IN THE CIRCUIT COURT
                                             1
                                                    FRANKLIN CIRCUIT COURT - DIVISION II
2
         OF MONTGOMERY COUNTY, ALABAMA
                                             2
                                                      CIVIL ACTION NO. 03-CI-1134
3
                                             3
   -----X
4
   STATE OF ALABAMA,
                                             4
5
         Plaintiff, : Case No.
                                              COMMONWEALTH OF KENTUCKY, :
           : CV-05-219
6
                                             6
                                                        Plaintiff, :
                                             7
7
   ABBOTT LABORATORIES, :
                                                     vs. : Judge
                                             8
8
   INC., et al., : Judge Charles
                                                                : Crittenden
9
       Defendants. : Price
                                             9
                                               ABBOTT LABORATORIES, INC., :
                                            10
10
                                                        Defendant. :
   -----X
11
                                            11
                                                -----X
12
                                            12
13
     IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                                            13
                                                    STATE OF WISCONSIN CIRCUIT COURT
14
         STATE OF HAWAII
                                            14
                                                          DANE COUNTY
                                            15
15
   -----X
                                                           Branch 9
16
   STATE OF HAWAII,
                                            16 -----x
17
         Plaintiff, : Case No.
                                            17 STATE OF WISCONSIN, :
18
        vs. : 06-10720-04-EEH
                                            18
                                                     Plaintiff, :
19 ABBOTT LABORATORIES, et al., : Judge Eden
                                            19
                                                 vs. : Case No.
      Defendants. : Elizabeth Hifo
20
                                            20 AMGEN, INC., et al., : 04-CV-1709
21 -----X
                                            21
                                               Defendants. :
22
                                            22
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Page 334
                                                                                           Page 336
   STATE OF SOUTH CAROLINA: IN THE COURT OF
                                                              APPEARANCES
                                                  1
2
   COUNTY OF RICHMOND :
                               COMMON PLEAS
                                                  2
  -----X FOR THE FIFTH
                                                  3
3
                                                     On behalf of the United States of America:
4
   STATE OF SOUTH CAROLINA: JUDICIAL DISTRICT
                                                  4
   and HENRY D. McMASTER : Case No.
                                                  5
                                                            ANA MARIA MARTINEZ, ESQ.
6 in his official capacity: 2006-CP-40-4394
                                                  6
                                                            United States Department of Justice
    as Attorney General for :
                                                  7
                                                            Assistant United States Attorney
   the State of South :
8
                                                            Southern District of Florida
                                                  8
9
    Carolina.
                                                  9
                                                            99 N.E. 4th Street
         Plaintiffs, :
10
                                                            Miami, Florida 33132
                                                 10
11
                                                 11
                                                            TELEPHONE: (305) 961-9431
12
    ABBOTT LABORATORIES, :
                                                            E-MAIL: Ana.maria.martinez@usdoj.gov
                                                 12
13
         Defendant. :
                                                 13
                                                                  -and-
    -----X
14
                                                 14
                                                            JUSTIN DRAYCOTT, ESQ.
15
                                                 15
                                                            United States Department of Justice
16
                                                 16
                                                            Civil Division
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                                                            P.O. Box 261
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                                                            Ben Franklin Station
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                                                            Washington, D.C. 20044
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                                                            TELEPHONE: (202) 305-9300
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                                                            E-MAIL: Justin.draycott@usdoj.gov
22 (CAPTIONS CONTINUED)
                                                 22
                                          Page 335
                                                                                           Page 337
1
    STATE OF SOUTH CAROLINA: IN THE COURT OF
                                                  1
                                                     APPEARANCES (Continued:)
2
    COUNTY OF RICHMOND : COMMON PLEAS
                                                  2
3
                   : FOR THE FIFTH
                                                  3
                                                     On behalf of Ven-A-Care:
4
                   : JUDICIAL CIRCUIT
                                                  4
5
                                                  5
   STATE OF SOUTH CAROLINA:
                                                            ROSLYN G. POLLACK, ESQ.
    and HENRY D. McMASTER, :
                                                  6
                                                            Berger & Montague, P.C.
6
                                                  7
                                                            1622 Locust Street
7
    in his official capacity:
    as Attorney General for:
                                                            Philadelphia, Pennsylvania 19103-6305
8
                                                  8
    the State of South : Civil Action No.
                                                            TELEPHONE: (215) 875-4666
                                                  9
10
               : 07-CP-40-0285
                                                            E-MAIL: rpollack@bm.net
    Carolina,
                                                 10
11
           Plaintiff, :
                                                 11
12
                                                 12
                                                     On behalf of U.S. Department of
                 : Civil Action No.
       VS.
    SANDOZ, INC.,
                   : 07-CP-40-0287
                                                     Health and Human Services:
13
                                                 13
14
           Defendant. :
                                                 14
15
    -----X
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                                                            LESLIE STAFFORD, ESQ.
16
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                                                            U.S. Department of Health and
17
                                                 17
                                                            Human Services
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                                                 18
                                                            Office of General Counsel, CMS Division
                                                            7500 Security Boulevard
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                                                 19
                                                            Mail Stop C2-05-23
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21
                                                 21
                                                            Baltimore, Maryland 21244-1850
                                                            TELEPHONE: (410) 786-9655
22
                                                 22
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|          | Page 338   |          | Page 340   |
|----------|--|----------|--|
| 1        | APPEARANCES (Continued:)                                   | 1        | APPEARANCES (Continued:)                                 |
| 2        |  | 2        |  |
| 3        | On behalf of City of New York and New York                 | 3        | On behalf of GlaxoSmithKline:                            |
| 4        | counties:  | 4        | CHANKAR BURAICHAAAN, 500                                 |
| 5        | MICHAEL WINCET HEDNIANDEZ ECO                              | 5        | SHANKAR DURAISWAMY, ESQ.                                 |
| 6        | MICHAEL WINGET-HERNANDEZ, ESQ.<br>WINGET-HERNANDEZ LLC     | 6<br>7   | Covington & Burling LLP                                  |
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| 10       | Austin, Texas 78703  | 10       | E-MAIL: Sduraiswamy@cov.com                              |
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| 12       | E-MAIL: Michael@winget-hernandez.com                       | 12       | On behalf of Bristol-Myers Squibb Company:               |
| 13       | getget   | 13       | (via telephone)  |
| 14       | On behalf of Abbott Laboratories:                          | 14       | ( , , , , , , , , , , , , , , , , , , ,                  |
| 15       |  | 15       | ANDREA W. TRENTO, ESQ.                                   |
| 16       | DAVID S. TORBORG, ESQ.                                     | 16       | Hogan & Hartson LLP                                      |
| 17       | Jones Day  | 17       | 875 Third Avenue   |
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| 19       | Washington, D.C. 20001-2113                                | 19       | TELEPHONE: (212) 918-3532                                |
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| 21       | E-MAIL: Dstorborg@jonesday.com                             | 21       | 45   |
| 22       |  | 22       | (Continued)  |
|          | Page 339   |          | Page 341   |
| 1        | APPEARANCES (Continued:)                                   | 1        | APPEARANCES (Continued:)                                 |
| 2        | (1111)   | 2        | ,  |
| 3        | On behalf of Dey, Inc.:                                    | 3        | On behalf of Baxter Health Care Corporation              |
| 4        | •  | 4        | (via telephone):   |
| 5        | NEIL MERKL, ESQ.   | 5        |  |
| 6        | Kelley Drye & Warren LLP                                   | 6        | EDEN M. HEARD, ESQ.                                      |
| 7        | 101 Park Avenue  | 7        | Dickstein Shapiro LLP                                    |
| 8        | New York, New York 10178                                   | 8        | 1825 Eye Street, N.W.                                    |
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| 12<br>13 | On behalf of Roxane Laboratories and                       | 12<br>13 | On behalf of the State of Alabama (via telephone):       |
| 14       | Boehringer Ingelheim:                                      | 14       | on behali of the state of Alabama (via telephone):       |
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|          |  |          |  |
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|          | ·  |          |  |
| 20       | ·  | 20       | Montgomery, Alabama 36103-4160                           |

|  | Page 342   |  | Page 344   |
|--|--|--|--|
| 1  | APPEARANCES (Continued):   | 1  | APPEARANCES (Continued):                                       |
| 2  | ,  | 2  | ,  |
| 3  | On behalf of Sandoz, Inc. (via telephone):   | 3  | On behalf of the State of California:                          |
| 4  | •  | 4  | NICHOLAS N. PAUL, ESQ.   |
| 5  | DAVID L. KLEINMAN, ESQ.  | 5  | Bureau of Medi-Cal Fraud & Elder Abuse                         |
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| 16   | Office of the Attorney General   | 16   |  |
| 17   | California Department of Justice   | 17   |  |
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| 19   |  | 19   |  |
| 20   |  | 20   |  |
| 21   |  | 21   |  |
| 22   | (Continued)  | 22   |  |
|  |  |  |  |
|  | Page 343   |  | Page 345   |
| 1  | Page 343 APPEARANCES (Continued):  | 1  | I-N-D-E-X  |
| 2  | APPEARANCES (Continued):   | 2  | I-N-D-E-X<br>WITNESS: PAGE:                                    |
| 2 3  | <del>-</del>   | 2  | I-N-D-E-X<br>WITNESS: PAGE:<br>LARRY REED                      |
| 2<br>3<br>4  | APPEARANCES (Continued):  On behalf of the State of Florida (via telephone):   | 2<br>3<br>4  | I-N-D-E-X<br>WITNESS: PAGE:                                    |
| 2 3 4 5  | APPEARANCES (Continued):  On behalf of the State of Florida (via telephone):  MARY S. MILLER, ESQ.   | 2<br>3<br>4<br>5   | I-N-D-E-X<br>WITNESS: PAGE:<br>LARRY REED                      |
| 2<br>3<br>4<br>5<br>6  | APPEARANCES (Continued):  On behalf of the State of Florida (via telephone):  MARY S. MILLER, ESQ.  Office of the Attorney General of Florida  | 2<br>3<br>4<br>5<br>6  | I-N-D-E-X<br>WITNESS: PAGE:<br>LARRY REED                      |
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Reed, Larry - Vol. III.txt
0604
                    UNITED STATES DISTRICT COURT
                FOR THE DISTRICT OF MASSACHUSETTS
 2
 3
     IN RE: PHARMACEUTICAL
                                       MDL NO. 1456
                                       CIVIL ACTION
     INDUSTRY AVERAGE WHOLESALE
     PRICE LITIGATION
                                       01-CV-12257-PBS
     THIS DOCUMENT RELATES TO
     U.S._ex rel. Ven-a-Care of
8
                                       Judge Patti B. Saris
 9
     the Florida Keys, Inc.
10
                                       Chief Magistrate
                                        Judge Marianne B.
11
     Abbott Laboratories, Inc.,
     No. 06-CV-11337-PBS
                                       Bowler
12
13
14
              (captions continue on following pages)
15
16
17
               Videotaped deposition of LARRY REED
                              Volume III
19
20
                                 Washington, D.C.
21
                                 Tuesday, March 18, 2008
22
                                 9:00 a.m.
0605
1
                      IN THE CIRCUIT COURT OF
 2
                     MONTGOMERY COUNTY, ALABAMA
 3
     STATE OF ALABAMA,
 5
                  Plaintiff,
                                         Case No. CV-2005-219
 6
 7
     ABBOTT LABORATORIES, INC.,
                                         Judge Charles Price
     et al.,
 9
                  Defendants.
10
11
12
13
            IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                          STATE OF HAWALL
14
15
16
     STATE OF HAWAII,
17
                  Pl ai nti ff,
                                         Case No.
                                         06-1-0720-04 EEH
18
           VS.
19
     ABBOTT LABORATORIES, INC.,
     et al.,
20
                                         JUDGE EDEN
21
                  Defendants.
                                         ELIZABETH HIFO
22
0606
           IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
1
                 IN AND FOR LEON COUNTY, FLORIDA
 2
     THE STATE OF FLORIDA
 3
     ex rel.
 5
     VEN-A-CARE OF THE FLORIDA KEYS,
 6
     INC., a Florida Corporation, by and
     through its principal officers and directors, ZACHARY T. BENTLEY and
 8
 9
10
     T. MARK JONES,
11
                  Plaintiffs,
                                                Civil Action
                                               No. 98-3032G
12
     MYLAN LABORATORIES INC.; MYLAN PHARMACEUTICALS INC.; NOVOPHARM
13
14
                                                Judge William
     LTD., SCHEIN PHARMACEUTICAL, INC.;
15
                                               L. Ğary
     TEVA PHARMACEUTI CAL I NDUSTRI ES
16
     LTD.; TEVA PHARMACEUTICAL USA; and
17
     WATSON PHARMACEUTICALS, INC.,
18
19
                  DEFENDANTS.
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Reed, Larry - Vol. III.txt
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0607
 1
                       COMMONWEALTH OF KENTUCKY
 2
                   FRANKLIN CIRCUIT COURT - DIV. II
 3
 4
     COMMONWEALTH OF KENTUCKY,
 5
                   Plaintiff,
                                                 Civil Action
                                                 NO. 03-CI-1134
 6
           VS.
      ABBOTT LABORATORIES, INC.,
 8
                   Defendants.
10
11
                  STATE OF WISCONSIN CIRCUIT COURT
12
13
                              DANE COUNTY
14
                                Branch 9
15
      STATE OF WISCONSIN,
16
17
                   Plaintiff,
                                            Case No. 04-CV-1709
18
           VS.
19
      AMGEN INC., et al.,
20
                   Defendants.
21
22
0608
                     IN THE COURT OF COMMON PLEAS
 2
                        FIFTH JUDICIAL CIRCUIT
 3
     STATE OF SOUTH CAROLINA, and HENRY D. McMASTER, in his
 5
                                                  STATE OF
                                               SOUTH CAROLINA
 6
 7
     official capacity as Attorney
                                                  COUNTY OF
     General for the State of South
 8
                                                  RI CHLAND
 9
     Carol i na,
10
                    Plaintiffs,
11
                                                Civil Action No.
           VS.
                                                2006-CP-40-4394
12
     ABBOTT LABORATORIES, INC.,
13
                   Defendants.
14
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0609
                     IN THE COURT OF COMMON PLEAS
 1
 2
                        FIFTH JUDICIAL CIRCUIT
 3
     STATE OF SOUTH CAROLINA, and
HENRY D. McMASTER, in his
official capacity as Attorney
 4
                                                  STATE OF
                                               SOUTH CAROLINA
 5
                                                  COUNTY OF
 6
 7
     General for the State of South
                                                  RI CHLAND
 8
     Carol i na,
 9
                    Pl ai nti ffs,
10
                                                Civil Action No.
           VS.
                                                2007-CP-40-0285
11
     SANDOZ INC.,
                                                2007-CP-40-0287
12
                   Defendants.
13
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16
            Continued videotaped deposition of LARRY REED,
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Reed, Larry - Vol. III.txt held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the
17
18
      proceedings being recorded stenographically by
Jonathan Wonnell, a Registered Professional Court
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      Reporter and Notary Public of the District of
22
      Columbia, and transcribed under his direction.
0610
 1
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Reed, Larry - Vol. III.txt
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22
     ALSO PRESENT:
                    CONWAY BARKER, videographer
0616
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           Examination By Mr. Merkl..... 851
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     NUMBER
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12
                           increased competition from
13
                           generic drugs has affected
14
                           prices and returns in the
15
                           pharmaceutical industry"
16
                            (no Bates ref)..... 817
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0617
                      PROCEEDINGS
2
                            (9: 20 a.m.)
 3
                THE VIDEOGRAPHER: In the United States
 5
     District Court for the District of Massachusetts
 6
     In Re: Pharmaceutical Industry Average Wholesale
7
     Price Litigation, related to the United States of
     America ex rel. Ven-A-Care of the Florida Keys,
8
     Incorporated, versus Abbott Laboratories,
Incorporated, et al., Case Number 01-CV-12257
PBS, this is the deposition, volume 3, of Larry
 9
10
11
12
     Reed.
13
                Today's date is March 18th 2008.
14
     location of the deposition is Jones Day, 51
     Louisiana Avenue, Northwest, Washington, D.C.
15
     Will counsel please identify yourselves and state
16
     whom you represent?
17
     MR. TORBORG: David Torborg Day on behalf of Abbott Laboratories.
18
                               David Torborg from Jones
19
                MR. MERKL: Neil Merkl from Kelley Drye
20
21
     on behalf of the Dey Companies.
22
                MR. HECK:
                            Jared Heck with Kirkland &
0618
1
     Ellis on behalf of the Roxane Companies.
2
                MR. BUEKER:
                              John Bueker from Ropes &
     Gray on behalf of Warrick Pharmaceuticals,
     Schering Corporation and Schering-Plough
 5
     Corporation.
 6
                MS. MARTINEZ: Ani Martinez on behalf
     of the United States.
```

```
Reed 30(b)(6), Larry.txt
00001
                     UNITED STATES DISTRICT COURT
  2
                 FOR THE DISTRICT OF MASSACHUSETTS
      IN RE: PHARMACEUTICAL
                                          MDL NO. 1456
  5
                                          CIVIL ACTION
      INDUSTRY AVERAGE WHOLESALE
  6
7
      PRICE LITIGATION
                                          01-CV-12257-PBS
      THIS DOCUMENT RELATES TO
      U.S._ex rel. Ven-a-Care of
  8
                                          Judge Patti B. Saris
  9
      the Florida Keys, Inc.
 10
                                          Chief Magistrate
 11
                                          Judge Marianne B.
      Abbott Laboratories, Inc.,
      No. 06-CV-11337-PBS
                                          Bowler
 12
 13
 14
               (captions continue on following pages)
 15
 16
                                  Washington, D.C.
 17
                                  Thursday, March 20, 2008
 18
                                  9:00 a.m.
 19
 20
         Videotaped deposition of LARRY REED as 30(b)(6)
 21
             witness for the UNITED STATES OF AMERICA
 22
00002
                       IN THE CIRCUIT COURT OF
  1
  2
                      MONTGOMERY COUNTY, ALABAMA
      STATE OF ALABAMA,
  4
  5
                   Pl ai nti ff,
  6
                                          Case No. CV-2005-219
  7
      ABBOTT LABORATORIES, INC.,
                                          Judge Charles Price
  8
9
      et al.,
                   Defendants.
 10
 11
 12
             IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
                           STATE OF HAWAII
 13
 14
      STATE OF HAWAII,
 15
 16
                   Plaintiff,
                                          Case No.
 17
                                          06-1-0720-04 EEH
      ABBOTT LABORATORIES, INC.,
 18
 19
      et al.,
                                          JUDGE EDEN
 20
                    Defendants.
                                          ELIZABETH HIFO
 21
 22
00003
            IN THE COURT OF THE SECOND JUDICIAL CIRCUIT
  1
  2
                  IN AND FOR LEON COUNTY, FLORIDA
  3
      THE STATE OF FLORIDA
  4
      ex rel.
  5
  6
7
      VEN-A-CARE OF THE FLORIDA KEYS,
      INC., a Florida Corporation, by and
      through its principal officers and directors, ZACHARY T. BENTLEY and
  8
  9
 10
      T. MARK JONES,
 11
                   Pl ai nti ffs,
                                                 Civil Action
 12
                                                No. 98-3032G
      MYLAN LABORATORIES INC.; MYLAN
 13
      PHARMACEUTICALS INC.; NOVOPHARM
 14
                                                 Judge William
      LTD., SCHEIN PHARMACEUTICAL, INC.;
TEVA PHARMACEUTICAL INDUSTRIES
                                                L. Ğary
 15
 16
      LTD.; TEVA PHARMACEUTICAL USA; and
 17
      WATSON PHARMACEUTICALS, INC.,
 18
 19
                   DEFENDANTS.
```

Page 1

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Reed 30(b)(6), Larry.txt
 20
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00004
  1
                       COMMONWEALTH OF KENTUCKY
                   FRANKLIN CIRCUIT COURT - DIV. II
  2
  3
  4
      COMMONWEALTH OF KENTUCKY,
  5
                    Plaintiff,
                                                Civil Action
  6
7
                                                NO. 03-CI-1134
            VS.
      ABBOTT LABORATORIES, INC., et al.,
  8
                    Defendants.
  9
 10
                   STATE OF WISCONSIN CIRCUIT COURT
 11
 12
                              DANE COUNTY
 13
                                 Branch 9
 14
 15
      STATE OF WISCONSIN,
                    Plaintiff,
 16
 17
                                            Case No. 04-CV-1709
            VS
      AMGEN INC., et al.,
 18
 19
                    Defendants.
 20
 21
 22
00005
                     IN THE COURT OF COMMON PLEAS
  2
                        FIFTH JUDICIAL CIRCUIT
  3
      STATE OF SOUTH CAROLINA, and
                                                  STATE OF
  5
      HENRY D. McMASTER, in his
                                              SOUTH CAROLINA
      official capacity as Attorney
General for the State of South
  6
                                                  COUNTY OF
  7
                                                  RI CHLAND
  8
      Carol i na,
  9
                    Plaintiffs,
 10
                                               Civil Action No.
                                               2006-CP-40-4394
      ABBOTT LABORATORIES, INC.,
 11
 12
                    Defendants.
 13
 14
 15
 16
 17
 18
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00006
                     IN THE COURT OF COMMON PLEAS
  1
                        FIFTH JUDICIAL CIRCUIT
  2
  3
      STATE OF SOUTH CAROLINA, and HENRY D. McMASTER, in his
  4
                                                  STATE OF
  5
                                              SOUTH CAROLINA
      official capacity as Attorney
  6
                                                  COUNTY OF
  7
      General for the State of South
                                                  RI CHLAND
  8
      Carol i na,
  9
                    Plaintiffs,
 10
                                               Civil Action No.
            VS.
      SANDOZ INC.,
                                               2007-CP-40-0285
 11
 12
                    Defendants.
                                               2007-CP-40-0287
 13
 14
 15
             Videotaped 30(b)(6) deposition of LARRY REED,
 16
      held at the law offices of Jones Day, 51 Louisiana
```

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Reed 30(b)(6), Larry txt Avenue, N.W., Washington, D.C. 20001\text{-}2113, the proceedings being recorded stenographically by
 17
 18
       Jonathan Wonnell, a Registered Professional Court
 19
 20
       Reporter and Notary Public of the District of
 21
       Columbia, and transcribed under his direction.
 22
00007
             APPEARANCES OF
                                                 COUNSEL
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  5
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                    Miami, Florida 33132
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                       Human Services:
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00009
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  2
              On behalf of the City of New York and all New
  4
5
6
7
8
9
                       York Counties other than Nassau and
                       Orange; and the States of Alaska, Hawaii,
                       Idaho, Illinois, Kentucky, South Carolina
                       and Wisconsin:
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                    Austin, Texas 78703 (512) 858-4181
 11
 12
 13
                    mi chael @wi nget-hernandez.com
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```
Reed 30(b)(6), Larry.txt
 14
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 16
                     Inc.:
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 21
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                   gazorsky@bm. net
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  2
             On behalf of Abbott Laboratories, Inc.:
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                   Jones Day
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                   Washi ngton, D.C. 20001-2113
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  9
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 21
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 10
 11
             On behalf of Roxane Laboratories and Boehringer
 12
                     Ingel heim:
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Kirkland & Ellis
 13
 14
 15
                   200 East Randolph Drive
                   Chicago, Illinois 60601
 16
                   (312) 469-7087
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 18
                   j heck@ki rkl and. com
 19
 20
21
 22
00012
                   APPEARANCES (Cont'd)
  1234567
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(212) 819-8711
  89
                   msal zman@whi tecase.com
 10
```

```
Reed 30(b)(6), Larry.txt
              On behalf of Schering-Plough Corporation,
 12
                       Schering Corporation and Warrick
 13
                      Pharmaceuticals Corporation:
 14
                    JOHN P. BUEKER, ESQ.
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                    Ropes & Gray
                    One International Place
 16
 17
                    Boston, Massachusetts 02110-2624
 18
                    (617) 951-7050
 19
                    j ohn. bueker@ropesgray.com
 20
21
              ALSO PRESENT:
 22
                    CONWAY BARKER, videographer
00013
                              CONTENTS
  2
                                                               PAGE
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       LARRY REED
  4
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  5
                                                                 219
                   By Ms. Martinez:
  6
7
                   By Mr. Torborg:
                                                                 231
  8
9
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 10
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             DESCRIPTION
                                                               PAGE
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 11
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             30(b)(1) deposition of Larry Reed (no
 13
             Bates ref)
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 14
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 15
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             Bates ref)
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Exhi bi t Abbott 775, HHC 009-0970
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                                                                 194
 17
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                                                                 210
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 21
             Scully and King-Shaw dated 10/22/2002
 22
             (redacted, no Bates ref)
00015
                          PROCEEDINGS
  1
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3
                                                           (9:39 a.m.)
                    THE VI DEOGRAPHER:
                                         In the United States
       District Court for the District of Massachusetts In Re: Pharmaceutical Industry Average Wholesale Price
  5
       Litigation, related to the United States of America ex
  6
       rel. Ven-A-Care of the Florida Keys Incorporated
```

# **EXHIBIT W**



#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION MDL No.1456 Master File No. 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corporation, et al., Civil Action No. 07-10248-PBS

#### CROSS-NOTICE OF DEPOSITION OF ELIZABETH RICHTER

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, the Roxane Defendants, by their undersigned attorneys, hereby cross-notice the deposition of Elizabeth Richter for the purposes of the above-captioned action. This deposition was noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.*, No. 06-CV-11337-PBS, a case pending in the United States District Court for the District of Massachusetts ("Abbott Action"). A copy of the deposition notice, served on November 30, 2007 in the Abbott Action, is attached as Exhibit 1 hereto.

Ms. Richter's deposition will begin at 9:00 a.m. on December 7, 2007 before a duly qualified officer and continue on successive days as necessary. The deposition shall be held at the law offices of Jones Day, 51 Louisiana Ave. N.W., Washington, D.C. 20001, and will be recorded by stenographic and/or sound and visual means. The deposition will be taken upon cross-examination. Arrangements will be made so that counsel may participate by telephone if they wish. The deposition is being taken for the purposes of discovery, for use at trial, and for other such purposes as permitted under the Federal Rules of Civil Procedure.

Dated: December 3, 2007

/s/ Eric T. Gortner

Helen E. Witt, P.C. Eric T. Gortner Jared T. Heck KIRKLAND & ELLIS LLP 200 East Randolph Drive Chicago, IL 60601

Telephone: (312) 861-2000 Facsimile: (312) 861-2200

/s/ Bruce A. Singal

Bruce A. Singal, BBO #464420 Richard Goldstein, BBO #565482 DONOGHUE BARRETT & SINGAL, P.C. One Beacon Street Boston, MA 02018

Telephone: (617) 720-5090 Facsimile: (617) 720-5092

Counsel for Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on December 3, 2007, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ Eric T. Gortner Eric T. Gortner

# **EXHIBIT W-1**

|       | 1  | UNITED STATES DISTRICT COURT |      |                    |
|-------|----|------------------------------|------|--------------------|
|       | 2  | FOR THE DISTRICT (           | OF M | ASSACHUSETTS       |
|       | 3  |                              | -    |                    |
|       | 4  | IN RE: PHARMACEUTICAL        | )    | MDL NO. 1456       |
|       | 5  | INDUSTRY AVERAGE WHOLESALE   | )    | CIVIL ACTION       |
|       | 6  | PRICE LITIGATION             | )    | 01-CV-12257-PBS    |
|       | 7  | THIS DOCUMENT RELATES TO     | )    |                    |
| Saris | 8  | U.S. ex rel. Ven-a-Care of   | )    | Judge Patti B.     |
|       | 9  | the Florida Keys, Inc.       | )    |                    |
|       | 10 | ٧.                           | )    | Chief Magistrate   |
|       | 11 | Abbott Laboratories, Inc.,   | )    | Judge Marianne B.  |
|       | 12 | No. 06-CV-11337-PBS          | )    | Bowler             |
|       | 13 |                              | -    |                    |
|       | 14 |                              |      |                    |
|       | 15 |                              |      |                    |
|       | 16 | Videotaped deposition o      | of E | LIZABETH RICHTER   |
|       | 17 |                              |      |                    |
|       | 18 | Was                          | shin | gton, D.C.         |
|       | 19 | Fri                          | iday | , December 7, 2007 |
|       | 20 | 9:0                          | 00 a | .m.                |
|       | 21 |                              |      |                    |
|       | 22 |                              |      |                    |

Videotaped deposition of ELIZABETH RICHTER, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Notary Public in and for the District of Columbia, and transcribed under his direction. 

|     | 1  | APPEARANCES OF COUNSEL                     |
|-----|----|--|
|     | 2  |  |
|     | 3  | On behalf of the United States of America: |
|     | 4  | JUSTIN DRAYCOTT, ESQ.                      |
|     | 5  | U.S. Department of Justice                 |
|     | 6  | Civil Division                             |
|     | 7  | P.O. Box 261, Ben Franklin Station         |
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|     | 11 |  |
| and | 12 | On behalf of the U.S. Department of Health |
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|     | 14 | TROY A. BARSKY, ESQ.                       |
|     | 15 | U.S. Department of Health & Human          |
|     | 16 | Services                                   |
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|     | 18 | 7500 Security Boulevard                    |
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|     | 20 | (410) 786-8873<br>Page 3                   |

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| 2  |  |
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| 5  | LOUIS P. GABEL, ESQ.                     |
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| 14 | Mylan:                                   |
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| 21 |                                      |
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| 13         | Schering Corporation and Warrick         |
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|            |  |

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|  |
| APPEARANCES (Cont'd)   |
|  |
| ALSO PRESENT:  |
| CONWAY BARKER, videographer  |
|  |
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|  |

Richter, Elizabeth INDEX OF EXAMINATIONS WITNESS NAME **PAGE** ELIZABETH RICHTER By Mr. Cook..... By Mr. Escobar..... By Mr. Gortner..... 

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**DESCRIPTION** 

**PAGE** 

NUMBER

# EXHIBIT X



### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) | MDL NO. 1456                              |
|--|---|---|
| AVERAGE WHOLESALE PRICE                      | ) |   |
| LITIGATION                                   | ) | CIVIL ACTION: 01-CV-12257-PBS             |
|  | ) |   |
|  | ) | Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO                     | ) |   |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) | Chief Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc.,           | ) |   |
| No. 06-CV-11337-PBS                          | ) |   |

#### NOTICE OF DEPOSITION OF VICKIE ROBEY

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Abbott Laboratories, by its undersigned attorneys, will take the deposition of Vickie Robey. Ms. Robey is being deposed in response to Abbott's Notice of Deposition of one or more persons designated by the United States to testify regarding the actions taken by the United States to insure the preservation of evidence, witness testimony, data, or other information relevant to or discoverable in this litigation. Vickie Robey is the Records Manager for CMS.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of Hogan & Hartson LLP, 111 South Calvert St., Baltimore, MD, on March 20, 2007, beginning at 9:00 a.m. and continuing on successive days as necessary. Such deposition will be recorded by stenographic and/or sound and visual means.

The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: March 8, 2007 /s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782-3939

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R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

### **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF VICKIE ROBEY to be served upon be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 8th day of March, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

# EXHIBIT X-1

```
Robey 30(b)(6), Victoria
0001
               UNITED STATES DISTRICT COURT
 1
 2
             FOR THE DISTRICT OF MASSACHUSETTS
 4
             ----X
 5
     IN RE: PHARMACEUTICAL
                                  MDL NO. 1456
 6
     INDUSTRY AVERAGE WHOLESALE :
                                  CIVIL ACTION:
 7
     PRICE LITIGATION
                                  01-CV-12257-PBS
 8
     THIS DOCUMENT RELATES TO
     U.S. ex rel. Ven-A-Care of:
9
                                  Judge Patti B. Saris
10
     the Florida Keys, Inc. v.
11
     Abbott Laboratories, Inc.,
                                : Chief Magistrate
12
     No. 06-CV-11337-PBS
                                  Judge Marianne B.
13
                                  Bowler
     ----X
14
15
                  HIGHLY CONFIDENTIAL
                  Tuesday, March 20, 2007
16
17
     The video 30(b)(6) deposition of VICTORIA ROBEY,
18
     called for oral examination by Counsel for the
     Defendant Abbott Laboratories, Inc., pursuant to
19
     notice, held in the law offices of Hogan &
20
21
     Hartson, 111 South Calvert Street, Baltimore,
22
     Maryl and 21202, beginning at 9:20 a.m., before
0002
     Carol J. Robinson, Registered Professional
 1
2
     Reporter and a Notary Public, when were present:
 4
 5
 6
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15
16
17
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21
22
0003
               APPEARANCES
1
 2
 3
     ON BEHALF OF THE PLAINTIFFS:
 4
     United States Department of Justice
 5
          ANA MARIA MARTINEZ, ESQUIRE
 6
     Assistant United States Attorney
     Southern District of Florida
 7
 8
     99 N.E. 4th Street
```

Page 1

```
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9
     Miami, FL 33132
10
     (305) 961-9431
11
12
     Department of Health and Human Services
13
     BY: LESLIE M. STAFFORD, ESQUIRE
14
     Office of General Counsel
15
     CMS Division
16
     7500 Security Boulevard
     Baltimore, Maryland 21244
17
18
     (410) 786-9655
19
20
21
22
     (CONTI NUED)
0004
 1
                APPEARANCES (CONTINUED)
 2
     BERGER & MONTAGUE, P.C.
 4
     BY: SUSAN SCHNEIDER THOMAS, ESQUIRE
 5
     1622 Locust Street
 6
     Philadelphia, PA 19103
 7
     (215) 875-3000
 8
     sthomas@bm. net
 9
10
     ON BEHALF OF DEFENDANT ABBOTT LABORATORIES:
11
     JONES DAY
12
     BY: R. CHRI STOPHER COOK, ESQUI RE
         LOUIS GABEL, ESQ.
13
14
     51 Louisiana Avenue, N.W.
15
     Washington, D.C.
                        20001
16
     (202) 879-3939
17
     chri stophercook@j onesday.com
18
19
20
21
22
     (CONTI NUED)
0005
                APPEARANCES (CONTINUED)
 1
2
3
     ON BEHALF OF DEY, INC.,
 4
     DEY, LP AND DEY, LP, INC.:
     KELLEY DRYE & WARREN LLP
 5
 6
     BY: ANTONIA F. GIULIANA, ESQUIRE
 7
     101 Park Avenue
 8
     New York, New York 10178
 9
     (212) 808-7609
10
     agi ul i ana@kel l eydrye. com
11
12
     ON BEHALF OF ROXANNE LABORATORIES:
13
     KIRKLAND & ELLIS
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          JARED T. HECK, Esquire
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     200 East Randolph Drive
     Chi cago, IL 60601
16
17
     312-469-7087
                               Page 2
```

```
Robey 30(b)(6), Victoria
18
     j heck@ki rkl and. com
19
     (via telephone)
20
21
22
     (CONTI NUED)
0006
               APPEARANCES (CONTINUED)
 1
 2
 3
     ON BEHALF OF SCHEIRING-WARRICK CORPORATION:
 4
     ROPES AND GRAY
 5
     BY:
          JOBE G. DANGANAN, Esquire
 6
     One International Place
 7
     Boston, MA 02110-2624
 8
     (617) 951-7290
9
     i obe. danganan@ropesgray.com
10
     (via telephone)
11
12
     ON BEHALF OF BAXTER HEALTHCARE:
     DICKSTEIN SHAPIRO
13
14
     BY: TINA D. REYNOLDS, Esquire
     1825 Eye Street NW
15
16
     Washington, DC 20006
17
     (202) 420-4114
18
     reynol dst@di ckstei nshapi ro. com
19
     (via telephone)
20
21
22
     (CONTI NUED)
0007
               APPEARANCES (CONTINUED)
 1
 2
     ON BEHALF OF ASTRAZENECA:
 4
     DAVIS POLK & WARDWELL
 5
          CATHERINE LIFESO, Esquire
 6
     450 Lexington Avenue
 7
     New York, NY 10017
 8
     (212) 450 - 4452
9
     catherine. I i feso@dpw. com
10
     (via telephone)
11
12
     Also Present: Michael Hunterton, Videographer
13
14
15
16
17
18
19
20
21
22
8000
                       CONTENTS
 1
 2
     EXAMINATION OF VICTORIA ROBEY
                                                       Page
 3
     By Mr. Cook.....
                                                         11
                               Page 3
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# **EXHIBIT Y**



## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| IN RE PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE<br>LITIGATION | ) ) MDL No. 1456 ) Civil Action No. 01-12257-PBS                  |
|--|---|
| THIS DOCUMENT RELATES TO:  | ) Judge Patti B. Saris  |
| ALL ACTIONS <sup>1</sup>   | <ul><li>) Magistrate Judge Marianne B. Bowler</li><li>)</li></ul> |

#### CROSS-NOTICE OF DEPOSITION OF AMY SERNYAK

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Schering Corporation ("Schering"), Schering Plough Corporation ("Schering Plough"), and Warrick Pharmaceuticals Corporation ("Warrick")<sup>2</sup> hereby cross-notice the deposition of Amy Sernyak for purposes of all cases pending in MDL No. 1456.

On February 26, 2007, attorneys for Abbott Laboratories, Inc. noticed the deposition of Ms. Sernyak for purposes of *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, No. 06-CV-11337-PBS, a matter that is currently a part of MDL No. 1456. This notice is attached hereto. Through this cross-notice, counsel are hereby informed that the deposition of Ms. Sernyak will also be proceeding for purposes of all other cases pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>1</sup> As explained herein, this cross-notice regards all actions pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>2</sup> This cross-notice, which is being served for purposes of a number of actions pending in MDL No. 1456, is only served in a particular action on behalf of those entities that have appeared, been named, and been served in that particular action. To the extent that Schering, Schering Plough, or Warrick have not appeared, been served, or been named in a particular action, this notice does not constitute an appearance, consent to service, or consent to joinder

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103 on March 6, 2007 beginning at 9:00 a.m. The attached subpoena *duces tecum* directs the witness to appear for the deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

By attorneys,

/s/ Eric P. Christofferson

John T. Montgomery (BBO#352220) Steven A. Kaufman (BBO#262230) Eric P. Christofferson (BBO#654087) Ropes & Gray LLP One International Place Boston, Massachusetts 02110-2624

(617) 951-7000

Attorneys for Schering Corporation, Schering-Plough Corporation, and Warrick Pharmaceuticals Corporation

Dated: February 27, 2007

#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Adam Wright
Adam Wright



## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) | MDL NO. 1456                              |
|--|---|---|
| AVERAGE WHOLESALE PRICE                      | ) |   |
| LITIGATION                                   | ) | CIVIL ACTION: 01-CV-12257-PBS             |
|  | ) | I I D W'D C '                             |
|  | ) | Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO                     | ) |   |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) | Chief Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc.,           | ) |   |
| No. 06-CV-11337-PBS                          | ) |   |

#### NOTICE OF DEPOSITION OF AMY SERNYAK

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Amy Sernyak.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103, on March 6, 2007 beginning at 9:00 a.m. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: February 26, 2007 /s/ David S. Torborg

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782 3939

Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

#### **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF AMY SERNYAK, and attachments, to be served upon be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 26th day of February, 2007.

/s/ David S. Torborg
David S. Torborg

#### UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA



Pending in:

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO

20001 (202) 879-3939

U.S. ex rel. Ven-A-Care of the Florida Keys, Inc., et al., v. Abbott Laboratories, Inc., et al.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

MDL NO. 1456

Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257

Judge Patti B. Saris

Chief Magistrate Judge Marianne B. Bowler

#### SUBPOENA DUCES TECUM

| TO:                   | Amy Sernyak   |   |
|-----------------------|---|---|
| 10,                   | Care of:  |   |
|                       | John K. Neal, Esq.  |   |
|                       | P.O. Box 261  |   |
|                       | Ben Franklin Station  |   |
|                       | Washington, D.C. 20044  |   |
| • YOU                 | U ARE COMMANDED to appear in the United States District C   | ourt at the place, date, and time             |
| specifie              | ed below to testify in the above case.  |   |
| PLACE O               | OF TESTIMONY  | COURTROOM                                     |
| <u> </u>              |   | DATE AND TIME                                 |
|                       | U ARE COMMANDED to appear at the place, date, and time specition in the above case.   | ecified below to testify at the taking of     |
| PLACE O               | F DEPOSITION  | DATE AND TIME                                 |
| Morga                 | an Lewis  |   |
|                       | Market Street   | March 6, 2007 at 9:00 AM                      |
|                       | delphia, PA 19103   |   |
| objects               | J ARE COMMANDED to produce and permit inspection and co<br>at the place, date, and time specified below (list documents or<br>Please see attached Exhibit A   | pying of the following documents or objects): |
| LACE                  |   | DATE AND TIME                                 |
| • YOU<br>below.       | J ARE COMMANDED to permit inspection of the following pres  | mises at the date and time specified          |
| PREMISE               | s   | DATE AND TIME                                 |
| designat<br>behalf, a | organization not a party to this suit that is subpoenaed for the te one or more officers, directors, or managing agents, or other and may set forth, for each person designated, the matters on version of Civil Procedure, 30(b)(6). | persons who consent to testify on its         |
| ISSUING (             | OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR  | DATE  |
| Attorney              | y for Defendants Abbott Laboratories, Inc.  | February 26, 2007                             |
| ISSUING C             | OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Torborg, Esq. Jones Da   | v 51 Louisiana Ave. N.W. Wachington, DC       |

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

#### (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

#### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### **EXHIBIT A**

#### **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs. This request does not seek documents contained at the offices of the United States Department of Health and Human Services Office of Inspector General.

#### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.
  - 4. "WAC" means "Wholesale Acquisition Cost."

## EXHIBIT Y-1

Sernyak, Amy Jane March 6, 2007

Philadelphia, PA

|    |   | Page 1 |
|----|---|--------|
| 1  | UNITED STATES DISTRICT COURT                          |        |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS                     |        |
| 3  | x   |        |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456                  |        |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION             |        |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS                    |        |
| 7  | vs. :   |        |
| 8  | THIS DOCUMENT RELATES TO :                            |        |
| 9  | U.S. ex rel. Ven-A-Care of :                          |        |
| 10 | The Florida Keys, Inc. :                              |        |
| 11 | v. Abbott Laboratories, :                             |        |
| 12 | Inc., No. 06-CV-11337-PBS :                           |        |
| 13 | x   |        |
| 14 |   |        |
| 15 | Video Tape Deposition of AMY JANE SERNYAK was taken   |        |
| 16 | pursuant to notice at the Law Offices of Morgan       |        |
| 17 | Lewis, 1701 Market Street, Philadelphia,              |        |
| 18 | Pennsylvania, on Tuesday, March 6, 2007, beginning at |        |
| 19 | 9:00 a.m., before Jeanne Christian, Court             |        |
| 20 | Reporter-Notary Public and Michael Mullen, Video Tape |        |
| 21 | Operator, there being present.                        |        |
| 22 |   |        |
|    |   |        |

Sernyak, Amy Jane March 6, 2007

#### Philadelphia, PA

|                                  | Timadel  |  | ,   |
|----------------------------------|--|--|---|
|                                  | Page 2   |  | Page 4  |
| 1                                | APPEARANCES  | 1                                      | APPEARANCES (CONTINUED)                               |
| 2                                | Representing Abbott Laboratories:  | 2                                      | Representing Sandoz, Inc.:                            |
| 3                                | DAVID S. TORBORG, ESQUIRE  | 3                                      | VICTORIA R. ORLOWSKI, ESQUIRE                         |
| 4                                | HILARY A. RAMSEY, ESQUIRE  | 4                                      | WHITE & CASE LLP                                      |
| 5                                | JONES DAY  | 5                                      | 1155 Avenue of the Americas                           |
| 6                                | 51 Louisiana Avenue, N.W.  | 6                                      | New York, NY 10036                                    |
| 7                                | Washington, D.C. 20001   | 7                                      | (212) 819-8254  |
| 8                                | (202) 879-3939   | 8                                      | (212) 017 0231  |
| 9                                | (202) 077 0707   | 9                                      | Representing Roxane, Boehringer:                      |
| 10                               | Representing United States:  | 10                                     | CEYLAN A. EATHERTON, ESQUIRE                          |
| 11                               | JOHN K. NEAL, ESQUIRE  | 11                                     | KIRKLAND & ELLIS LLP                                  |
| 12                               | NANCY W. BROWN, ESQUIRE  | 12                                     | 200 East Randolph Drive                               |
| 13                               | US DEPARTMENT OF JUSTICE   | 13                                     | Chicago, IL 60601                                     |
| 14                               | Civil Division, Fraud Section  | 14                                     | (312) 469-7002  |
| 15                               | 601 D Street, N.W., Room 9536  | 15                                     | (312) 407-7002  |
| 16                               | Washington, D.C. 20004   | 16                                     | Representing Schering and Warrick:                    |
| 17                               | (202) 307-0405   | 17                                     | ERIC P. CHRISTOFFERSON, ESQUIRE                       |
| 18                               | (202) 307-0403   | 18                                     | ROPES & GRAY LLP                                      |
| 19                               |  | 19                                     | One International Place                               |
| 20                               |  | 20                                     | Boston, MA 02110                                      |
| 21                               |  | 21                                     | (617) 951-7976  |
| 22                               | CONTINUED  | 22                                     | CONTINUED   |
| 22                               | CONTINUED  | 22                                     | CONTINUED   |
|                                  | Page 3   |  | Page 5  |
| 1                                | APPEARANCES (CONTINUED)  | 1                                      | APPEARANCES (CONTINUED)                               |
| 2                                | Representing Ven-A-Care of the Florida Keys:   | 2                                      | Representing the Commonwealth of Massachusetts:       |
| 3                                | ROSLYN G. POLLACK, ESQUIRE   | 3                                      | RICHARD C. HEIDLAGE, ESQUIRE                          |
| 4                                | BERGER & MONTAGUE, P.C.  | 4                                      | THE COMMONWEALTH OF MASSACHUSETTS                     |
| 5                                | 1622 Locust Street   | 5                                      | Assistant Attorney General                            |
| 6                                | Philadelphia, PA 19103   | 6                                      | One Ashburton Place, Room 813                         |
| 7                                | (215) 875-3000   | 7                                      | Boston, MA 02108                                      |
| 8                                |  | 8                                      | (617) 727-2200  |
| 9                                | Representing MDL Plaintiffs:   | 9                                      |   |
| 10                               | JENNIFER FOUNTAIN CONNOLLY, ESQUIRE  | 10                                     | Representing the City of New York, Counties of New    |
| 11                               | WEXLER/TORISEVA/WALLACE LLP  | 11                                     | York also represented by KMS and the State of Hawaii: |
| 12                               | One North LaSalle Street - Suite 2000  | 12                                     | MICHAEL WINGET-HERNANDEZ, ESQUIRE                     |
| 13                               |  | 1                                      | WINICET LICONANDEZ LLC                                |
|                                  | Chicago, IL 60602  | 13                                     | WINGET-HERNANDEZ, LLC                                 |
| 14                               | Chicago, IL 60602<br>(312) 346-2222  | 13<br>14                               | 3112 Windsor Road, #228                               |
| 14<br>15                         | · · · · · · · · · · · · · · · · · · ·  |  |   |
|                                  | · · · · · · · · · · · · · · · · · · ·  | 14                                     | 3112 Windsor Road, #228                               |
| 15                               | (312) 346-2222   | 14<br>15                               | 3112 Windsor Road, #228<br>Austin, TX 78703           |
| 15<br>16                         | (312) 346-2222  Representing Dey Companies   | 14<br>15<br>16                         | 3112 Windsor Road, #228<br>Austin, TX 78703           |
| 15<br>16<br>17                   | (312) 346-2222  Representing Dey Companies NEIL MERKL, ESQUIRE   | 14<br>15<br>16<br>17                   | 3112 Windsor Road, #228<br>Austin, TX 78703           |
| 15<br>16<br>17<br>18             | (312) 346-2222  Representing Dey Companies  NEIL MERKL, ESQUIRE  KELLEY DRYE & WARREN LLP                                      | 14<br>15<br>16<br>17<br>18             | 3112 Windsor Road, #228<br>Austin, TX 78703           |
| 15<br>16<br>17<br>18<br>19       | (312) 346-2222  Representing Dey Companies  NEIL MERKL, ESQUIRE  KELLEY DRYE & WARREN LLP  101 Park Avenue                     | 14<br>15<br>16<br>17<br>18<br>19       | 3112 Windsor Road, #228<br>Austin, TX 78703           |
| 15<br>16<br>17<br>18<br>19<br>20 | (312) 346-2222  Representing Dey Companies  NEIL MERKL, ESQUIRE  KELLEY DRYE & WARREN LLP  101 Park Avenue  New York, NY 10178 | 14<br>15<br>16<br>17<br>18<br>19<br>20 | 3112 Windsor Road, #228<br>Austin, TX 78703           |

Sernyak, Amy Jane March 6, 2007

#### Philadelphia, PA

|  |  | •  |  |
|--|--|--|--|
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | A P P E A R A N C E S (CONTINUED)  APPEARING TELEPHONICALLY: Representing Schering Division:     JASON GIST, ESQUIRE     KEMPPEL HUFFMAN & ELLIS     255 East Fireweed Lane - Suite 200     Anchorage, AK 99503     (907) 277-1604  Representing Schering Warrick:     JOBE DANGANAN, ESQUIRE     ROPES & GRAY LLP     One International Place     Boston, MA     (617) 951-7290   | 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | CONTINUED  APPEARING TELEPHONICALLY (CONTINUED): Representing Baxter LISA HALL, ESQUIRE DICKSTEIN SHAPIRO LLP 1825 Eye Street NW Washington, DC 20006 (202) 420-4129 |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | Page 7 APPEARING TELEPHONICALLY (CONTINUED): Representing Bristol Myers Squibb: JESSICA FEINGOLD, ESQUIRE HOGAN & HARTSON 875 Third Avenue New York, NY 10022 (212) 918-3636  Representing Amgen, Inc.: JOSEPH YOUNG, ESQUIRE HOGAN & HARTSON LLP 111 S. Calvert Street - Suite 1600 Baltimore, MD 21202 (410) 659-2775  Representing the State of Alabama: CLINTON C. CARTER, ESQUIRE BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. 218 Commerce Street Montgomery, AL 36104 (334) 269-2343 | 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | C O N T E N T S  WITNESS: AMY JANE SERNYAK PAGE Examination By Mr. Torborg   |

# EXHIBIT Z

Sexton, Gail May 20, 2008 Washington, DC

Page 1 UNITED STATES DISTRICT COURT 1 FOR THE DISTRICT OF MASSACHUSETTS 3 IN RE: PHARMACEUTICAL ) MDL NO. 1456 5 INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION NO. 6 PRICE LITIGATION ) 01-CV-12257-PBS 7 THIS DOCUMENT RELATES TO: 9 The City of New York v. Abbott Labs., et al. 10 (S.D.N.Y. No. 04-CV-06054)11 County of Suffolk v. Abbott Labs., et al. 12 (E.D.N.Y. No. 03-CV-229) 13 County of Westchester v. Abbott Labs., et al. 14 (S.D.N.Y. No. 03-CV-6178) 15 County of Rockland v. Abbott Labs., et al. (S.D.N.Y. No. 03-CV-7055) 16 17 [Caption continues on Next Page] 18 19 Washington, D.C. 20 Monday, May 20, 2008 21 9:30 a.m. 22 VIDEOTAPED DEPOSITION OF GAIL SEXTON

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 2
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                                                          (N.D.N.Y. No. 05-CV-00479)
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                                                          (N.D.N.Y. No. 05-CV-00715)
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                                                          (N.D.N.Y. No. 05-CV-00839)
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8
    (N.D.N.Y. No. 05-CV-00422)
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19
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    (N.D.N.Y. No. 05-CV-00878)
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    County of Broome v. Abbott Labs., et al.
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                                                          County of Seneca v. Abbott Labs., et al.
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 4
    (N.D.N.Y. No. 05-CV-00456)
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    (N.D.N.Y. No. 05-CV-00088)
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 7
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                                                          County of Schuyler v. Abbott Labs., et al.
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9
    County of Cayuga v. Abbott Labs., et al.
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                                                          County of Steuben v. Abbott Labs., et al.
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                                                          and.
    (N.D.N.Y. No. 05-CV-00881)
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    County of Herkimer v. Abbott Labs., et al.
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    County of Oneida v. Abbott Labs., et al.
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    (N.D.N.Y. No. 05-CV-00489)
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    County of Fulton v. Abbott Labs., et al.
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    (N.D.N.Y. No. 05-CV-00519)
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Washington, DC

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Page 6
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            UNITED STATES DISTRICT COURT
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                                                               UNITED STATES DISTRICT COURT
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          FOR THE DISTRICT OF MASSACHUSETTS
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                                                             FOR THE DISTRICT OF MASSACHUSETTS
3
                                                    4
                                                                                 ) MDL NO. 1456
    IN RE: PHARMACEUTICAL
                               ) MDL NO. 1456
                                                      IN RE: PHARMACEUTICAL
5
    INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION
                                                      INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION NO.
                                                                              ) 01-CV-12257-PBS
  PRICE LITIGATION
                            ) 01-CV-12257-PBS
                                                      PRICE LITIGATION
6
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8
    THIS DOCUMENT RELATES TO )
                                                      THIS DOCUMENT RELATES TO
                                                                                    ) Judge Patti B. Saris
    U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris
                                                    9
                                                       State of California, ex rel. )
10
  the Florida Keys, Inc.
                                                   10 Ven-a-Care v. Abbott
                                                                              )
11
                    ) Chief Magistrate
                                                   11 Laboratories, Inc., et al. ) Magistrate Judge
                                                   12 Case No. 1:03-CV-11226-PBS ) Marianne Bowler
    Abbott Laboratories, Inc., ) Judge Marianne B.
12
13
    No. 06-CV-11337-PBS
                            ) Bowler
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                                                                (CAPTIONS CONTINUED)
             (CAPTIONS CONTINUED)
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      IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
                                                                  COMMONWEALTH OF KENTUCKY
                                                    1
        THIRD JUDICIAL DISTRICT AT ANCHORAGE
2
                                                    2
                                                               FRANKLIN CIRCUIT COURT - DIV. II
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  STATE OF ALASKA,
                                                    4
                                                       COMMONWEALTH OF KENTUCKY, ex rel.
5
          Plaintiff,
                    )
                                                    5
                                                        JACK CONWAY, Attorney General
                    ) Case No.
                                                                                  ) Civil Action
6
                                                    6
                                                                Plaintiff.
   ALPHARMA BRANDED PRODUCTS ) 3AN-06-12026 CI
                                                    7
                                                                                 ) No. 03-CI-1135
                                                           VS.
   DIVISION, INC., et al.
                                                    8
                                                        WARRICK PHARMACEUTICALS CORP., et al.,)
9
         Defendants.
                                                    9
                                                                Defendants.
10
                                                    10
11
      IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
                                                   11
12
         IN AND FOR THE COUNTY OF MARICOPA
                                                   12
                                                                 IN THE COURT OF COMMON PLEAS
13
                                                    13
                                                                  FIFTH JUDICIAL CIRCUIT
14 ROBERT J. SWANSON, individually )
                                                   14
15 and on behalf of himself and )
                                                    15
                                                       In re: South Carolina
16 all others similarly situated, )
                                                        Pharmaceutical Pricing Litigation ) STATE OF
                                                   16
17
          Plaintiff,
                                                   17
                                                                              ) SOUTH CAROLINA
18
                     ) No. CV-2002-04988
                                                   18 This document relates to:
                                                                                  ) COUNTY OF
19 TAP PHARMACEUTICAL PRODUCTS, ) Judge Janet Barton
                                                   19 Civil Action No. 2006-CP-40-4390 ) RICHLAND
20 INC., et al.,
                                                   20
                                                        Civil Action No. 2006-CP-40-4399 )
21
          Defendants.
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3 (Pages 6 to 9)

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Washington, DC
                                               Page 10
        IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
1
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                                                               APPEARANCES OF COUNSEL
2
                STATE OF HAWAII
                                                       2
                                                       3
 3
                                                           On behalf of the United States of America:
4
                              ) Civil Nos.
                                                       4
    STATE OF HAWAII,
5
            Plaintiff,
                        ) 06-1-0720-04 EEH
                                                       5
                                                                   JAMES FAUCI, ESQ.
6
                       ) 07-1-1639-09 EEH
                                                       6
                                                                   U.S. Attorney's Office
       VS.
7
    ABBOTT LABORATORIES, INC., )
                                                       7
                                                                   1 Courthouse Way
                                                                   Boston, Massachusetts 02210
8
    et al.,
                       ) JUDGE EDEN
                                                       8
9
                                                                   (617) 748-3298
                          ) ELIZABETH HIFO
                                                       9
            Defendants.
10
   ______
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11
    STATE OF HAWAII,
                                                      11
                                                                   -- and --
12
            Plaintiff,
                                                      12
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                                                      13
                                                                   LAURIE A. OBEREMBT, ESQ.
       VS.
                       )
14
    SCHERING CORPORATION; DOE )
                                                      14
                                                                   U.S. Department of Justice
15 CORPORATIONS 1-100; DOE )
                                                      15
                                                                   Civil Division
    ENTITIES 1-100,
                                                                   P.O. Box 261, Ben Franklin Station
16
                            )
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17
                                                                   Washington, D.C. 20044
            Defendants.
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                                                                   (202) 305-1088
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1
        Videotaped deposition of GAIL SEXTON, held at
                                                       1
                                                                 APPEARANCES (Cont'd)
    the law offices of Ropes & Gray, 700 12th Street,
                                                       2
2
 3
    N.W., Washington, D.C. 20005, the proceedings being
                                                       3
                                                          On behalf of the U.S. Department of Health and
    recorded stenographically by Jonathan Wonnell, a
                                                       4
                                                          Human Services:
4
    Registered Professional Court Reporter and Notary
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    Public of the District of Columbia, and transcribed
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                                                                  LESLIE M. STAFFORD, ESQ.
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7
                                                       7
    under his direction.
                                                                  U.S. Department of Health & Human Services
                                                       8
                                                                  Office of General Counsel, CMS Division
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                                                                  7500 Security Boulevard
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                                                                  Mail Stop C2-05-23
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                                                                  Baltimore, Maryland 21244
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                                                      12
                                                                  (410) 786-9655
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14
                                                      14
                                                          On behalf of the State of California:
                                                      15
15
16
                                                      16
                                                                  RITA HANSCOM, ESQ. (via phone)
                                                                  Supervising Deputy Attorney General
17
                                                      17
18
                                                      18
                                                                  Civil Prosecutions Unit
                                                      19
                                                                  P.O. Box 85266
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                                                                  110 West A Street, #1100
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                                                                  San Diego, California 82186
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                                                                  (619)-688-6099
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Sexton, Gail May 20, 2008 Washington, DC

|   | Washington, DC   |   |  |         |
|---|--|---|--|---------|
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14  | Page 14  A P P E A R A N C E S (Cont'd)  On behalf of the City of New York and all New York Counties other than Nassau and Orange; and the States of Alaska, Hawaii, Idaho, Illinois, Kentucky, South Carolina and Wisconsin:  MICHAEL WINGET-HERNANDEZ, ESQ. Winget-Hernandez, LLC 3112 Windsor Road, Suite 228 Austin, Texas 78703 (512) 858-4181 michael@winget-hernandez.com | 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14   | A P P E A R A N C E S (Cont'd)  On behalf of Ethex Corporation:  MARK A. FLESSNER, ESQ. Sonnenschein, Nath & Rosenthal 8000 Sears Tower 233 South Wacker Drive Chicago, Illinois 60606 (312) 876-7934 mflessner@sonnenschein.com  On behalf of Merck & Company, Inc.:  | Page 16 |
| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22  | On behalf of Ven-A-Care of the Florida Keys, Inc.:  MARJORY P. ALBEE, ESQ. (via phone) Mager & Goldstein LLP 1818 Market Street, Suite 3710 Philadelphia, Pennsylvania 19103 (215) 640-3280 malbee@magergoldstein.com  | 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22  | KATHLEEN M. FONES, ESQ.<br>Hughes & Hubbard<br>1775 Eye Street, N.W.<br>Washington, D.C. 20006-2401<br>(202) 721-4671<br>fones@hugheshubbard.com   |         |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | A P P E A R A N C E S (Cont'd)  On behalf of Abbott Laboratories:  ANDREA L. CARON, ESQ. (via phone) Jones Day 77 West Wacker Chicago, Illinois 60601-1692 (312) 782-3939 acaron@jonesday.com  On behalf of Dey, Inc., Dey, L.P. and Mylan:  SARAH REID, ESQ. Kelley, Drye & Warren LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 sreid@kelleydrye.com             | 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | A P P E A R A N C E S (Cont'd)  On behalf of Par Pharmaceuticals:  PAUL K. DUEFFERT, ESQ. Williams & Connolly, L.L.P. 725 Twelfth Street, N.W. Washington, D.C. 20005 (202) 434-5000 pdueffert@wc.com  On behalf of Pharmacea and Pfizer:  EZRA DODD CHURCH, ESQ. (via pmorgan Lewis 1701 Market Street Philadelphia, Pennsylvania 19103- (215) 963-5010 echurch@morganlewis.com | ŕ       |

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| 1  | Page 18 APPEARANCES (Cont'd)   | 1  | Page 20 APPEARANCES (Cont'd)  |
| 2  | ,  | 2  | ,   |
| 3  | On behalf of Roxane Laboratories and Boehringer  | 3  | ALSO PRESENT:   |
| 4  | Ingelheim:   | 4  | CONWAY BARKER, videographer   |
| 5  | 99   | 5  | 3   |
| 6  | SETH A. GASTWIRTH, ESQ.  | 6  |   |
| 7  | Kirkland & Ellis   | 7  |   |
| 8  | 200 East Randolph Drive  | 8  |   |
| 9  | Chicago, Illinois 60601  | 9  |   |
| 10   | (312) 861-2464   | 10   |   |
| 11   | sgastwirth@kirkland.com  | 11   |   |
| 12   | ogustum tir e kiirkuuriurisenii  | 12   |   |
| 13   | On behalf of Sandoz, Inc.:   | 13   |   |
| 14   | on bondin or bundoz, mo  | 14   |   |
| 15   | MILANA SALZMAN, ESQ. (via phone)   | 15   |   |
| 16   | White & Case LLP   | 16   |   |
| 17   | 1155 Avenue of the Americas  | 17   |   |
| 18   | New York, New York 10036-2787  | 18   |   |
| 19   | (212) 819-8711   | 19   |   |
| 20   | msalzman@whitecase.com   | 20   |   |
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|  |  |  |   |
|  | Page 19  |  | Page 21   |
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| 2 3 4 5  | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  | 2<br>3<br>4<br>5   | C O N T E N T S WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker   |
| 2<br>3<br>4<br>5<br>6  | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ.  | 2<br>3<br>4<br>5<br>6  | C O N T E N T S WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker   |
| 2<br>3<br>4<br>5<br>6<br>7   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray   | 2<br>3<br>4<br>5<br>6<br>7   | C O N T E N T S WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | C O N T E N T S WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | C O N T E N T S  WITNESS NAME PAGE GAIL SEXTON  Examination By Mr. Bueker |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | CONTENTS  WITNESS NAME PAGE GAIL SEXTON  Examination By Mr. Bueker        |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | CONTENTS  WITNESS NAME PAGE GAIL SEXTON  Examination By Mr. Bueker        |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                                     | CONTENTS  WITNESS NAME PAGE GAIL SEXTON  Examination By Mr. Bueker        |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | CONTENTS  WITNESS NAME PAGE  GAIL SEXTON  Examination By Mr. Bueker       |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:  BRYAN M. STEPHANY, ESQ.  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:  BRYAN M. STEPHANY, ESQ. Kirkland & Ellis   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:  BRYAN M. STEPHANY, ESQ. Kirkland & Ellis 655 Fifteenth Street, N.W., Suite 1200                        | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:  BRYAN M. STEPHANY, ESQ. Kirkland & Ellis 655 Fifteenth Street, N.W., Suite 1200 Washington, D.C. 20005 | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | CONTENTS WITNESS NAME PAGE GAIL SEXTON  Examination By Mr. Bueker         |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | A P P E A R A N C E S (Cont'd)  On behalf of Schering-Plough Corporation, Schering Corporation and Warrick Pharmaceuticals Corporation:  JOHN P. BUEKER, ESQ. Ropes & Gray One International Place Boston, Massachusetts 02110-2624 (617) 951-7050 john.bueker@ropesgray.com  On behalf of Teva Pharmaceuticals USA, Inc., IVAX Corporation, IVAX Pharmaceuticals, Inc. and Sicor, Inc.:  BRYAN M. STEPHANY, ESQ. Kirkland & Ellis 655 Fifteenth Street, N.W., Suite 1200                        | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | CONTENTS WITNESS NAME PAGE GAIL SEXTON Examination By Mr. Bueker          |

6 (Pages 18 to 21)

# **EXHIBIT AA**



#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| N RE: PHARMACEUTICAL INDUSTRY                                       | ) MDL NO. 1456                        |
|---|---------------------------------------|
| AVERAGE WHOLESALE PRICE<br>LITIGATION                               | ) CIVIL ACTION: 01-CV-12257-PBS       |
|   | ) Judge Patti B. Saris                |
| THIS DOCUMENT RELATES TO<br>ALL CASES IN MDL NO. 1456. <sup>1</sup> | ) Magistrate Judge Marianne B. Bowler |
|   | )                                     |

#### **CROSS-NOTICE OF DEPOSITION OF DENNIS SMITH**

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, defendants Abbott Laboratories and Abbott Laboratories, Inc. (collectively, "Abbott") hereby cross-notices the deposition of Dennis Smith for purposes of the above-captioned action. This deposition has been noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, a case originally filed in the United States District Court for the Southern District of Florida, Case No. 06-21303-CIV-ASG, and now part of MDL 1456 in the United States District Court for the District of Massachusetts (the "DOJ suit"). A copy of the notice of deposition in the DOJ suit is attached as Exhibit A.

Mr. Smith's deposition will take place at Jones Day, 51 Louisiana Avenue, Washington, D.C., on February 26, 2008 beginning at 9:00 a.m. The deposition will take place before a notary public, or any other officer authorized to administer oaths. The deposition will be taken upon cross-examination.

The deposition will be recorded by stenographic and/or sound and visual means.

Arrangements will be made so that counsel may participate by telephone if they wish. The

<sup>&</sup>lt;sup>1</sup> This notice applies to all cases in the MDL in which Abbott Laboratories or Abbott Laboratories, Inc. is named, has appeared and in which discovery has not closed.

deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: February 14, 2008 /s/ Brian J. Murray

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, IL 60601 Tel: (312) 782-3939 Fax: (312) 782-8585

Counsel for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

CHI-1628268v1

2

#### **CERTIFICATE OF SERVICE**

I, Jeremy P. Cole, an attorney, hereby certify that I caused a true and correct copy of the foregoing CROSS-NOTICE OF DEPOSITION OF DENNIS SMITH to be served upon all counsel of record electronically via LexisNexis, this 14th day of February, 2008.

/s/ Jeremy P. Cole Jeremy P. Cole

#### **EXHIBIT A**

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) MDL NO. 1456                        |
|--|---------------------------------------|
| AVERAGE WHOLESALE PRICE<br>LITIGATION        | ) COURT ACTION OF CV 12257 PDG        |
| LINGATION                                    | ) CIVIL ACTION: 01-CV-12257-PBS       |
|  | ) Judge Patti B. Saris                |
| THIS DOCUMENT RELATES TO                     | )                                     |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc., et al.    | )                                     |
| No. 06-CV-11337-PBS                          | )                                     |

#### NOTICE OF DEPOSITION OF DENNIS SMITH

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Dennis Smith.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at Jones Day, 51 Louisiana Avenue, Washington, D.C., on February 26, 2008 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena duces tecum directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: February 14, 2008 /s/ David S. Torborg

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

#### **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing NOTICE OF DEPOSITION OF DENNIS SMITH to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 14th day of February, 2008.

/s/ David S. Torborg
David S. Torborg

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

# IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al. Pending in: UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS MDL NO. 1456 Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257-PBS Judge Patti B. Saris Magistrate Judge Marianne B. Bowler

#### SUBPOENA DUCES TECUM

TO: Dennis Smith
c/o Ana Maria Martinez, Esq.
United States Attorney's Office
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132

| YOU ARE COMMANDED to appear in the United States District Court at the to testify in the above case.   | e place, date, and time specified below  |  |  |
|--|--|--|--|
| PLACE OF TESTIMONY   | COURTROOM                                |  |  |
|  | DATE AND TIME                            |  |  |
| YOU ARE COMMANDED to appear at the place, date, and time specified bel deposition in the above case.   | ow to testify at the taking of a         |  |  |
| PLACE OF DEPOSITION Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001   | February 26, 2008 at 9:00 AM             |  |  |
| YOU ARE COMMANDED to produce and permit inspection and copying of the place, date, and time specified below (list documents or objects):  Please see attached Exhibit A  | e following documents or objects at the  |  |  |
| PLACE  | DATE AND TIME                            |  |  |
| YOU ARE COMMANDED to permit inspection of the following premises at the  | ne date and time specified below.        |  |  |
| PREMISES   | DATE AND TIME                            |  |  |
| Any organization not a party to this suit that is subpoensed for the taking of a more officers, directors, or managing agents, or other persons who consent to testic each person designated, the matters on which the person will testify. Federal Rule | fy on its behalf, and may set forth, for |  |  |
| issuing officer signature and title (indicate if attorney for plaintiff or defendant)  Attorney for Defendant Abbott Laboratories, Inc.  | February 14, 2008                        |  |  |
| ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Torborg, Esq., Jones Day, 51 20001, (202) 879-3939  | Louisiana Ave., N.W., Washington, D.C.   |  |  |

#### (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and/or copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and/or copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and/or copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, and/or copying. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and/or copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
    - (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held:
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
  - (iv) subjects a person to undue burden.

#### (B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
  - (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### EXHIBIT A

#### **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all documents in your personal possession relating in any way to the pricing of drugs and/or the administration or dispensing of drugs under Medicare or Medicaid.
- 3. A copy of any and all documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc. (Ven-A-Care), Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all documents in your personal possession concerning communications with the Department of Justice ("DOJ"), CMS, or Ven-A-Care regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

#### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any document or documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to, advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences or other meetings, contracts, correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms,

interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegrams, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT AA-1**

Smith, Dennis G.

Washington, DC

February 26, 2008

|    |   | Page 1 |  |
|----|---|--------|--|
| 1  | UNITED STATES DISTRICT COURT                      |        |  |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS                 |        |  |
| 3  |   |        |  |
| 4  | IN RE: PHARMACEUTICAL ) MDL NO. 1456              |        |  |
| 5  | INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION         |        |  |
| 6  | PRICE LITIGATION ) 01-CV-12257-PBS                |        |  |
| 7  | THIS DOCUMENT RELATES TO )                        |        |  |
| 8  | U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris |        |  |
| 9  | the Florida Keys, Inc. )                          |        |  |
| 10 | v. ) Chief Magistrate                             |        |  |
| 11 | Abbott Laboratories, Inc., ) Judge Marianne B.    |        |  |
| 12 | No. 06-CV-11337-PBS ) Bowler                      |        |  |
| 13 |   |        |  |
| 14 | (caption continues on following pages)            |        |  |
| 15 |   |        |  |
| 16 |   |        |  |
| 17 | 17 Videotaped deposition of DENNIS G. SMITH       |        |  |
| 18 | Volume I  |        |  |
| 19 |   |        |  |
| 20 | Washington, D.C.                                  |        |  |
| 21 | Tuesday, February 26, 2008                        |        |  |
| 22 | 9:00 a.m.   |        |  |
|    |   |        |  |

Smith, Dennis G. February 26, 2008

#### Washington, DC

| 1  | Page 2 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT   | 1  | Page 4<br>APPEARANCES OF COUNSEL   |
|--|--|--|--|
| 2  | IN THE COURT OF THE SECOND JUDICIAL CIRCUIT  |  | APPEARANCES OF COUNSEL   |
| 3  | THE STATE OF FLORIDA   | 3  | On behalf of the United States of America:   |
| 4  | ex rel.  | 4  | on behalf of the officed States of Afficial.   |
| 5  |  | 5  | ANA MARIA MARTINEZ, ESQ.   |
| 6  | VEN-A-CARE OF THE FLORIDA KEYS, )  |  | ·  |
| 7  | INC., a Florida Corporation, by and )  | 6<br>7   | United States Department of Justice 99 N.E. 4th Street   |
| 8  | through its principal officers and )   | 8  | Miami, Florida 33132   |
| 9  | directors, ZACHARY T. BENTLEY and )  | 9  | ·  |
| 10   | T. MARK JONES,   | 10   | (305) 961-9431   |
| 11   | Plaintiffs, ) Civil Action   |  | ana.maria.martinez@usdoj.gov   |
| 12   | vs. ) No. 98-3032G   | 11   |  |
| 13   | MYLAN LABORATORIES INC.; MYLAN )   | 12   | On behalf of the U.S. Department of Health and   |
|  | •  | 13   | On behalf of the U.S. Department of Health and   |
| 14   | PHARMACEUTICALS INC.; NOVOPHARM ) Judge William  |  | Human Services:  |
| 15   | LTD., SCHEIN PHARMACEUTICAL, INC.; ) L. Gary   | 15   | DDIAN A VELLEY FCO   |
| 16   | TEVA PHARMACEUTICAL INDUSTRIES )   | 16   | BRIAN A. KELLEY, ESQ.  |
| 17   | LTD.; TEVA PHARMACEUTICAL USA; and )   | 17   | U.S. Department of Health &  |
| 18   | WATSON PHARMACEUTICALS, INC., )  | 18   | Human Services   |
| 19   | DEFENDANTS. )  | 19   | Office of General Counsel, CMS Division  |
| 20   |  | 20   | 330 Independence Avenue, S.W., Room 5345   |
| 21   |  | 21   | Washington, D.C. 20201   |
| 22   |  | 22   | (202) 205-8702   |
|  |  |  |  |
|  | Page 3   |  | Page 5   |
| 1  | Page 3 IN THE CIRCUIT COURT OF   | 1  | Page 5 APPEARANCES (Cont'd)  |
| 1 2  | IN THE CIRCUIT COURT OF  | 1 2  | Page 5 APPEARANCES (Cont'd)  |
|  | <del>-</del>   |  |  |
| 2  | IN THE CIRCUIT COURT OF  | 2  | APPEARANCES (Cont'd)   |
| 2 3  | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA   | 2  | APPEARANCES (Cont'd) On behalf of the State of Alabama:  |
| 2<br>3<br>4  | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA STATE OF ALABAMA, )   | 2<br>3<br>4  | APPEARANCES (Cont'd)   |
| 2 3 4 5  | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219  | 2<br>3<br>4<br>5<br>6  | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC  |
| 2<br>3<br>4<br>5<br>6<br>7   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, ) Plaintiff, ) vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price   | 2<br>3<br>4<br>5<br>6<br>7   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone)  |
| 2<br>3<br>4<br>5<br>6  | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219  | 2<br>3<br>4<br>5<br>6  | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price et al., )   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price et al., )   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price et al., )   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price et al., )   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants. ) Defendants.   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, ) Plaintiff, ) vs. ) Case No. CV-2005-219 ABBOTT LABORATORIES, INC., ) Judge Charles Price et al., ) Defendants. )  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                                     | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Uideotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                                     | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:  MATTHEW KILMAN, ESQ. (via phone)   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Registered Professional Court   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Registered Professional Court Reporter and Notary Public of the District of | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:  MATTHEW KILMAN, ESQ. (via phone) Supervising Deputy Attorney General   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Registered Professional Court   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:  MATTHEW KILMAN, ESQ. (via phone) Supervising Deputy Attorney General Civil Prosecutions Unit P.O. Box 85266                          |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Registered Professional Court Reporter and Notary Public of the District of | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19       | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:  MATTHEW KILMAN, ESQ. (via phone) Supervising Deputy Attorney General Civil Prosecutions Unit P.O. Box 85266 110 West A Street, #1100 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  STATE OF ALABAMA, Plaintiff, vs. Case No. CV-2005-219 ABBOTT LABORATORIES, INC., Defendants.  Videotaped deposition of DENNIS G. SMITH, held at the law offices of Jones Day, 51 Louisiana Avenue, N.W., Washington, D.C. 20001-2113, the proceedings being recorded stenographically by Jonathan Wonnell, a Registered Professional Court Reporter and Notary Public of the District of | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | A P P E A R A N C E S (Cont'd)  On behalf of the State of Alabama:  WINDY COCKRELL BITZER, ESQ. (via phone) Hand Arendall LLC 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 (205) 324-4400 wbitzer@handarendall.com  On behalf of the State of California:  MATTHEW KILMAN, ESQ. (via phone) Supervising Deputy Attorney General Civil Prosecutions Unit P.O. Box 85266                          |

Smith, Dennis G. February 26, 2008

Washington, DC

| A P P E A R A N C E S (Cont'd)   |    |  | I  |  |
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| 2  |    | Page 6   |    | Page 8                                       |
| 3  | 1  | APPEARANCES (Cont'd)                               | 1  | APPEARANCES (Cont'd)                         |
| 4  |    |  | 2  |  |
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| 6 Office of the Attorney General of Florida 7 PL-01, The Capitol 8 Tallahassee, Florida 32399-1050 9 (850) 414-3600 9 (850) 414-3600 10 11 12 On behalf of the City of New York and all New York 11 12 On behalf of the City of New York and all New York 13 Counties other than Nassau and Orange; the States 14 of Wisconsin, Illinois, Kentucky, Idaho, Alaska, 15 Hawaii, South Carolina and Mississippi: 16   | 4  |  | 4  |  |
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| 8 Tallahassee, Fiorida 32399-1050   8   New York, New York 10022   9   (212) 918-3000   10   spkawatra@hhlaw.com   11   12   On behalf of the City of New York and all New York   12   On behalf of the City of New York and all New York   12   On behalf of Dey, Inc., Dey, L.P. and Mylan: of Wisconsin, Illinois, Kentucky, Idaho, Alaska,   14   Hawaii, South Carolina and Mississippi:   15   NEIL MERKL, ESQ.   16   Kelley, Drye & Warren LLP   101 Park Avenue   18   New York, New York 10178   19   3112 Windsor Road, Suite 228   19   (212) 808-7811   21   michael@winget-hernandez.com   12   22     2   2   2   2   2   2   2   | 6  | Office of the Attorney General of Florida          | 6  | Hogan & Hartson                              |
| 9 (212) 918-3000 10 spkawatra@hhlaw.com 11 11 2 On behalf of the City of New York and all New York 13 Counties other than Nassau and Orange; the States 14 of Wisconsin, Illinois, Kentucky, Idaho, Alaska, 15 Hawaii, South Carolina and Mississippi: 16  | 7  | PL-01, The Capitol                                 | 7  | 875 Third Avenue                             |
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| 14 of Wisconsin, Illinois, Kentucky, Idaho, Alaska, 15 Hawaii, South Carolina and Mississippi: 16  | 12 | On behalf of the City of New York and all New York | 12 |  |
| 14 of Wisconsin, Illinois, Kentucky, Idaho, Alaska, 15 Hawaii, South Carolina and Mississippi: 16  | 13 | Counties other than Nassau and Orange; the States  | 13 | On behalf of Dey, Inc., Dey, L.P. and Mylan: |
| 16   | 14 | of Wisconsin, Illinois, Kentucky, Idaho, Alaska,   | 14 |  |
| 17 MICHAEL WINGET-HERNANDEZ, ESQ. 18 Winget-Hernandez, LLC 19 3112 Windsor Road, Suite 228 20 Austin, Texas 78703 21 (512) 858-4181 22 michael@winget-hernandez.com 21   | 15 | Hawaii, South Carolina and Mississippi:            | 15 | NEIL MERKL, ESQ.                             |
| 17 MICHAEL WINGET-HERNANDEZ, ESQ. 18 Winget-Hernandez, LLC 18 New York, New York 10178 19 3112 Windsor Road, Suite 228 20 Austin, Texas 78703 21 (512) 858-4181 22 michael@winget-hernandez.com  20 Page 7 1 APPEARANCES (Cont'd) 2 On behalf of Ven-A-Care of the Florida Keys, Inc.: 4 5 JOSEPH C. WILSON, ESQ. 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 10 (650) 697-0577 11 jwilson@cpmlegal.com 11  On behalf of Abbott Laboratories, Inc.: 14  | 16 |  | 16 | Kelley, Drye & Warren LLP                    |
| 18         Winget-Hernandez, LLC         18         New York, New York 10178           19         3112 Windsor Road, Suite 228         19         (212) 808-7811           20         Austin, Texas 78703         20         nmerkl@kelleydrye.com           21         (512) 858-4181         21           22         michael@winget-hernandez.com         22           Page 7           1         A P P E A R A N C E S (Cont'd)         1         A P P E A R A N C E S (Cont'd)           2         3         On behalf of Ven-A-Care of the Florida Keys, Inc.:         4         4           5         JOSEPH C. WILSON, ESQ.         5         VICTOR RORTVEDT, ESQ.           6         Cotchett, Pitre & McCarthy         6         Arnold & Porter           7         San Francisco Airport Office Center         7         555 Twelfth Street, N.W.           8         840 Malcolm Road         8         Washington, D.C. 20004           9         Burlingame, California 94010         9         (202) 942-5000           10         (650) 697-0577         10           11         jwilson@cpmlegal.com         11           12         On behalf of Roxane Laboratories and Boehringer Ingelheim:           14         15         JOHN W. REALE  | 17 | MICHAEL WINGET-HERNANDEZ, ESQ.                     | 17 |  |
| 19   | 18 | Winget-Hernandez, LLC                              | 18 | New York, New York 10178                     |
| 20   | 19 | · · · · · · · · · · · · · · · · · · ·              | 19 |  |
| 21       (512) 858-4181       21         22       michael@winget-hernandez.com       22         Page 7       Page 7         1       A P P E A R A N C E S (Cont'd)       2         2       3       On behalf of Ven-A-Care of the Florida Keys, Inc.:       3       On behalf of Endo Pharmaceuticals:         4       4       5       JOSEPH C. WILSON, ESQ.       5       VICTOR RORTVEDT, ESQ.         6       Cotchett, Pitre & McCarthy       6       Arnold & Porter       7       555 Twelfth Street, N.W.         8       840 Malcolm Road       8       Washington, D.C. 20004         9       Burlingame, California 94010       9       (202) 942-5000         10       (650) 697-0577       10         11       jwilson@cpmlegal.com       11         12       On behalf of Roxane Laboratories and         13       Boehringer Ingelheim:         14       14         15       R. CHRISTOPHER COOK, ESQ.       15       JOHN W. REALE, ESQ.         16       SEAN P. MALONE, ESQ.       16       Kirkland & Ellis         17       Jones Day       17       200 East Randolph Drive         18       51 Louisiana Avenue, N.W.       18       Chicago, Illinois 60  | 20 | Austin, Texas 78703                                | 20 | • •  |
| Page 7  A P P E A R A N C E S (Cont'd)  On behalf of Ven-A-Care of the Florida Keys, Inc.:  JOSEPH C. WILSON, ESQ. Cotchett, Pitre & McCarthy San Francisco Airport Office Center San Francisco Airport Office Center Burlingame, California 94010 (650) 697-0577 Jijwilson@cpmlegal.com  Con behalf of Roxane Laboratories and Boehringer Ingelheim:  R. CHRISTOPHER COOK, ESQ. SEAN P. MALONE, ESQ. SEAN P. MALONE, ESQ. SEAN P. MALONE, ESQ. Washington, D.C. 20004 Kirkland & Ellis JOHN W. REALE, ESQ. Kirkland & Ellis JOHN W. REALE, ESQ. Kirkland & Ellis JOHN W. REALE, ESQ. Kirkland & Ellis Johns Day Mashington, D.C. 20001-2113 Washington, D.C. 20001-2113 Washington, D.C. 20001-2113 Washington, D.C. 20001-2113 Jiguilson@cpmlegal.com  R. CHRISTOPHER COOK, ESQ. Jiguilson@cpmlegal.com Jiguilson@cpmlegal.com John W. REALE, ESQ. Kirkland & Ellis Chicago, Illinois 60601 Washington, D.C. 20001-2113 Jiguilson@cpmlegal.com John W. Reale, ESQ. Jiguilson@cpmlegal.com John W. Reale, ESQ. Jiguilson@cpmlegal.com John W. Reale, ESQ. John W. | 21 |  | 21 | <b>3 3</b>                                   |
| 1 APPEARANCES (Cont'd) 2 On behalf of Ven-A-Care of the Florida Keys, Inc.: 3 On behalf of Endo Pharmaceuticals: 4 5 JOSEPH C. WILSON, ESQ. 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 10 (650) 697-0577 11 jwilson@cpmlegal.com 12  | 22 | michael@winget-hernandez.com                       | 22 |  |
| 1 APPEARANCES (Cont'd) 2 On behalf of Ven-A-Care of the Florida Keys, Inc.: 3 On behalf of Endo Pharmaceuticals: 4 JOSEPH C. WILSON, ESQ. 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 10 (650) 697-0577 11 jwilson@cpmlegal.com 12 On behalf of Abbott Laboratories, Inc.: 13 On behalf of Roxane Laboratories and 14 SEAN P. MALONE, ESQ. 15 JOHN W. REALE, ESQ. 16 SEAN P. MALONE, ESQ. 16 SEAN P. MALONE, ESQ. 17 Jones Day 18 51 Louisiana Avenue, N.W. 18 Chicago, Illinois 60601 19 Washington, D.C. 20001-2113 20 (202) 879-3939 21 christophercook@jonesday.com 21 APPEARANCES (Cont'd) 2 On behalf of Endo Pharmaceuticals: 4 VICTOR RORTVEDT, ESQ. 6 Arnold & Porter 7 555 Twelfth Street, N.W. 8 Washington, D.C. 20004 9 (202) 942-5000 10 (650) 697-0577 10 10 11 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14  |    |  |    |  |
| 2 3 On behalf of Ven-A-Care of the Florida Keys, Inc.: 4 5 JOSEPH C. WILSON, ESQ. 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 10 (650) 697-0577 11 jwilson@cpmlegal.com 12 On behalf of Abbott Laboratories, Inc.: 14 15 R. CHRISTOPHER COOK, ESQ. 16 SEAN P. MALONE, ESQ. 16 SEAN P. MALONE, ESQ. 17 Jones Day 18 51 Louisiana Avenue, N.W. 18 Chicago, Illinois 60601 19 Washington, D.C. 20001-2113 20 (202) 879-3939 21 christophercook@jonesday.com 2 On behalf of Endo Pharmaceuticals: 4 On behalf of Endo Pharmaceuticals: 4 On behalf of Endo Pharmaceuticals: 4 On behalf of Fance Rortvedt, EsQ. 4 On behalf of Rorter 7 555 Twelfth Street, N.W. 8 Washington, D.C. 20004 9 (202) 942-5000 10 (202) 942-5000 11 12 On behalf of Roxane Laboratories and Boehringer Ingelheim: 14  |    |  |    |  |
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| 4 5 JOSEPH C. WILSON, ESQ. 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 10 (650) 697-0577 11 jwilson@cpmlegal.com 11 12 On behalf of Roxane Laboratories and 13 On behalf of Abbott Laboratories, Inc.: 14 15 R. CHRISTOPHER COOK, ESQ. 15 JOHN W. REALE, ESQ. 16 SEAN P. MALONE, ESQ. 16 SEAN P. MALONE, ESQ. 17 Jones Day 18 51 Louisiana Avenue, N.W. 18 Chicago, Illinois 60601 19 Washington, D.C. 20001-2113 20 (202) 879-3939 21 christophercook@jonesday.com 21 VICTOR RORTVEDT, ESQ. 4 SYICTOR RORTVEDT, ESQ. 5 VICTOR RORTVEDT, ESQ. 5 VICTOR RORTVEDT, ESQ. 5 VICTOR RORTVEDT, ESQ. 5 VICTOR RORTVEDT, ESQ. 5 Arnold & Porter 7 555 Twelfth Street, N.W. 8 Washington, D.C. 20004 9 (202) 942-5000 10 (202) 942-5000 11 On behalf of Roxane Laboratories and Boehringer Ingelheim: 14   |    |  |    |  |
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| 6 Cotchett, Pitre & McCarthy 7 San Francisco Airport Office Center 8 840 Malcolm Road 9 Burlingame, California 94010 9 (202) 942-5000 10 (650) 697-0577 11 jwilson@cpmlegal.com 11 12 On behalf of Roxane Laboratories and 13 On behalf of Abbott Laboratories, Inc.: 14 15 R. CHRISTOPHER COOK, ESQ. 16 SEAN P. MALONE, ESQ. 17 Jones Day 18 51 Louisiana Avenue, N.W. 18 Chicago, Illinois 60601 19 Washington, D.C. 20001-2113 20 (202) 879-3939 21 christophercook@jonesday.com 2 Arnold & Porter 7 555 Twelfth Street, N.W. 8 Washington, D.C. 20004 9 (202) 942-5000 10 10 (650) 697-0577 10 11  |    |  |    |  |
| 7       San Francisco Airport Office Center       7       555 Twelfth Street, N.W.         8       840 Malcolm Road       8       Washington, D.C. 20004         9       Burlingame, California 94010       9       (202) 942-5000         10       (650) 697-0577       10         11       jwilson@cpmlegal.com       11         12       On behalf of Roxane Laboratories and         13       Boehringer Ingelheim:         14       14         15       R. CHRISTOPHER COOK, ESQ.       15         16       SEAN P. MALONE, ESQ.       16         17       Jones Day       17         18       51 Louisiana Avenue, N.W.       18         19       Washington, D.C. 20001-2113       19         20       (202) 879-3939       20         21       christophercook@jonesday.com  | _  |  |    | •  |
| 8       840 Malcolm Road       8       Washington, D.C. 20004         9       Burlingame, California 94010       9       (202) 942-5000         10       (650) 697-0577       10         11       jwilson@cpmlegal.com       11         12       On behalf of Roxane Laboratories and         13       On behalf of Abbott Laboratories, Inc.:       13         14       Boehringer Ingelheim:         15       R. CHRISTOPHER COOK, ESQ.       15         16       SEAN P. MALONE, ESQ.       16         17       Jones Day       17         18       Chicago, Illinois 60601         19       Washington, D.C. 20001-2113       19         20       (202) 879-3939       20       jreale@kirkland.com         21       christophercook@jonesday.com       21   |    |  |    |  |
| 9  |    | ·  |    |  |
| 10       (650) 697-0577       10         11       jwilson@cpmlegal.com       11         12       12       On behalf of Roxane Laboratories and         13       On behalf of Abbott Laboratories, Inc.:       13       Boehringer Ingelheim:         14       14         15       R. CHRISTOPHER COOK, ESQ.       15       JOHN W. REALE, ESQ.         16       SEAN P. MALONE, ESQ.       16       Kirkland & Ellis         17       Jones Day       17       200 East Randolph Drive         18       51 Louisiana Avenue, N.W.       18       Chicago, Illinois 60601         19       Washington, D.C. 20001-2113       19       (312) 861-3452         20       (202) 879-3939       20       jreale@kirkland.com         21       christophercook@jonesday.com       21  |    |  |    | <u> </u>                                     |
| 11 jwilson@cpmlegal.com 12 On behalf of Roxane Laboratories and 13 On behalf of Abbott Laboratories, Inc.: 14 15 R. CHRISTOPHER COOK, ESQ. 16 SEAN P. MALONE, ESQ. 17 Jones Day 17 200 East Randolph Drive 18 51 Louisiana Avenue, N.W. 18 Chicago, Illinois 60601 19 Washington, D.C. 20001-2113 20 (202) 879-3939 21 christophercook@jonesday.com 21 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 13 Boehringer Ingelheim: 14 12 On behalf of Roxane Laboratories and 15 JOHN W. REALE, ESQ. 16 Kirkland & Ellis 17 200 East Randolph Drive 18 Chicago, Illinois 60601 19 (312) 861-3452 20 jreale@kirkland.com   |    | •  |    | (202) 942-5000                               |
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| 14       14         15       R. CHRISTOPHER COOK, ESQ.       15       JOHN W. REALE, ESQ.         16       SEAN P. MALONE, ESQ.       16       Kirkland & Ellis         17       Jones Day       17       200 East Randolph Drive         18       51 Louisiana Avenue, N.W.       18       Chicago, Illinois 60601         19       Washington, D.C. 20001-2113       19       (312) 861-3452         20       (202) 879-3939       20       jreale@kirkland.com         21       christophercook@jonesday.com       21   |    |  |    |  |
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| 17       Jones Day       17       200 East Randolph Drive         18       51 Louisiana Avenue, N.W.       18       Chicago, Illinois 60601         19       Washington, D.C. 20001-2113       19       (312) 861-3452         20       (202) 879-3939       20       jreale@kirkland.com         21       christophercook@jonesday.com       21   |    | •  |    |  |
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| 19       Washington, D.C. 20001-2113       19       (312) 861-3452         20       (202) 879-3939       20       jreale@kirkland.com         21       christophercook@jonesday.com       21   |    | •  |    | ·  |
| 20 (202) 879-3939 20 jreale@kirkland.com<br>21 christophercook@jonesday.com 21   |    |  |    | •  |
| 21 christophercook@jonesday.com 21   |    | <u> </u>   |    |  |
|  |    | · ·  |    | jreale@kirkland.com                          |
| 22 spmalone@jonesday.com 22  |    |  |    |  |
| $\mathbf{I}$   | 22 | spmalone@jonesday.com                              | 22 |  |

Smith, Dennis G. February 26, 2008

Washington, DC

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|          | Page 10  |          | Page 12  |
| 1        | APPEARANCES (Cont'd)   | 1        | CONTENTS   |
| 2        |  | 2        | WITNESS NAME PAGE  |
| 3        | On behalf of Sandoz, Inc.:                                   | 3        | DENNIS G. SMITH  |
| 4        | LADA A DEDWANGED FOO ( 's land)                              | 4        | Examination By Mr. Cook 016  |
| 5        | LARA A. BERWANGER, ESQ. (via phone)                          | 5        |  |
| 6        | White & Case LLP   | 6<br>7   | EXHIBITS   |
| 7<br>8   | 1155 Avenue of the Americas<br>New York, New York 10036-2787 | 8        | NUMBER DESCRIPTION PAGE  |
| 9        | (212) 819-2549   | 9        | Exhibit Abbott-Smith 485, Resume of Dennis G.  |
| 10       | lberwanger@whitecase.com                                     | 10       | Smith (no Bates ref). 018  |
| 11       | ibei wangei e wiiiteease.com                                 | 11       | Exhibit Abbott-Smith 486, HHD101-0489 - 0492 118   |
| 12       |  | 12       | Exhibit Abbott-Smith 487, Smith letter to Scully   |
| 13       | On behalf of Schering-Plough Corporation,                    | 13       | dated 10/22/02   |
| 14       | Schering Corporation and Warrick                             | 14       | (redacted, no Bates  |
| 15       | Pharmaceuticals Corporation:                                 | 15       | ref) 121   |
| 16       | '  | 16       | ·  |
| 17       | GINGER APPLEBERRY, ESQ. (via phone)                          | 17       |  |
| 18       | Locke, Liddell & Sapp  | 18       | (Exhibit Abbott-Smith 486 was retained by Mr. Cook)  |
| 19       | 2200 Ross Avenue, Suite 2200                                 | 19       |  |
| 20       | Dallas, Texas 75201  | 20       |  |
| 21       | (214) 740-8459   | 21       |  |
| 22       | gappleberry@lockeliddell.com                                 | 22       |  |
|          | Page 11  |          | Page 13  |
| 1        | APPEARANCES (Cont'd)   | 1        | P R O C E E D I N G S  |
| 2        | ,  | 2        | (9:25 a.m.)  |
| 3        | ALSO PRESENT:  | 3        | THE VIDEOGRAPHER: In the United States   |
| 4        |  | 4        | District Court for the District of Massachusetts   |
| 5        | CONWAY BARKER, videographer                                  | 5        | In Re: Pharmaceutical Industry Average Wholesale   |
| 6        |  | 6        | Price Litigation, related to the United States of  |
| 7        |  | 7        | America ex rel. Ven-A-Care of the Florida Keys   |
| 8        |  | 8        | Incorporated versus Abbott Laboratories  |
| 9        |  | 9        | Incorporated et al., Case Number 01-CV-12257   |
| 10       |  | 10       | (PBS) and other cross noticed cases, this is the   |
| 11       |  | 11       | deposition of Dennis G. Smith.   |
| 12<br>13 |  | 12<br>13 | Today's date is February 26th 2008.  |
| 14       |  | 14       | The location is Jones Day, 51 Louisiana Avenue,<br>Northwest, Washington, D.C. Will counsel please |
| 15       |  | 15       | identify yourselves and state whom you represent?  |
| 16       |  | 16       | MR. COOK: Christopher Cook from Jones  |
| 17       |  | 17       | Day. We represent Abbott Laboratories, Inc.  |
| 18       |  | 18       | MR. MERKL: Neil Merkl from Kelley  |
| 19       |  | 19       | Drye. We represent the Dey companies.  |
| 20       |  | 20       | MR. REALE: John Reale from Kirkland &  |
| 21       |  | 21       | Ellis and I represent the Boehringer entities.   |
| 22       |  | 22       | MS. MARTINEZ: Ani Martinez. I  |
| Ī        |  | I        |  |

4 (Pages 10 to 13)

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|    |  | Page 242 |
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| 1  | UNITED STATES DISTRICT COURT               |          |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS          |          |
| 3  | X  |          |
| 4  | IN RE PHARMACEUTICAL )                     |          |
| 5  | INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  |          |
| 6  | PRICE LITIGATION, ) Civil Action No        |          |
| 7  | THIS DOCUMENT RELATES TO: ) 01-12257-PBS   |          |
| 8  | United States of America, ) Judge Patti B. |          |
| 9  | ex rel. Ven-A-Care of the ) Saris          |          |
| 10 | Florida Keys, Inc., v. ) Mag. Judge        |          |
| 11 | Abbott Laboratories Inc. ) Marianne Bowler |          |
| 12 | Civil Action No. )                         |          |
| 13 | 06-11337-PBS )                             |          |
| 14 | X  |          |
| 15 | (cross-captions on following pages)        |          |
| 16 |  |          |
| 17 | Washington, D.C.                           |          |
| 18 | Thursday, March 27, 2008                   |          |
| 19 | 9:40 a.m.                                  |          |
| 20 |  |          |
| 21 | Videotaped deposition of DENNIS G. SMITH   |          |
| 22 | Volume II                                  |          |
|    |  |          |

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|---|--|---|---|
| 1   | UNITED STATES DISTRICT COURT   | 1   | APPEARANCES OF COUNSEL  |
| 2   | FOR THE DISTRICT OF MASSACHUSETTS  | 2   |   |
| 3   |  | 3   | On behalf of the United States of America:  |
| 4   | IN RE: PHARMACEUTICAL ) MDL NO. 1456   | 4   |   |
| 5   | INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION:   | 5   | ANA MARIA MARTINEZ, ESQ.  |
| 6   | PRICE LITIGATION ) 01-CV-12257-PBS   | 6   | United States Department of Justice   |
| 7   |  | 7   | 99 N.E. 4th Street  |
| 8   | THIS DOCUMENT RELATES TO: ) JUDGE PATTI B. SARIS   | 8   | Miami, Florida 33132  |
| 9   | ALL CASES IN MDL NO. 1456 ) MAGISTRATE JUDGE   | 9   | (305) 961-9431  |
|   | MARIANNE B. BOWLER   | 10  | ana.maria.martinez@usdoj.gov  |
| 11  | WATCHWINE B. BOWLER  | 11  | ana.mana.maninez@usuoj.gov  |
| 12  | IN THE CIDCUIT COURT OF  |   |   |
|   | IN THE CIRCUIT COURT OF  | 12  |   |
| 13  | MONTGOMERY COUNTY, ALABAMA   | 13  | On behalf of the U.S. Department of Health &  |
| 14  |  | 14  | Human Services:   |
|   | IN THE MATTER OF: )  | 15  |   |
| 16  | ALABAMA MEDICAID ) MASTER DOCKET NO.   | 16  | BRIAN A. KELLEY, ESQ.   |
| 17  | PHARMACEUTICAL AVERAGE ) CV-2005-219   | 17  | U.S. Department of Health & Human Services  |
| 18  | WHOLESALE PRICE LITIGATION )   | 18  | Office of General Counsel, CMS Division   |
| 19  |  | 19  | 330 Independence Avenue, S.W., Room 5345  |
| 20  | THIS DOCUMENT RELATES TO: )  | 20  | Washington, D.C. 20201  |
|   | ALL ACTIONS )  | 21  | (202) 205-8702  |
| 22  | ,  | 22  | (202) 200 0702  |
|   |  |   |   |
|   | Page 244   |   | Page 246  |
| 1   | UNITED STATES DISTRICT COURT   | 1   | APPEARANCES (Cont'd)  |
| 2   | DISTRICT OF MASSACHUSETTS  | 2   |   |
| 3   | X  | 3   | On Behalf of Dey, Inc., Dey, L.P., and Mylan:   |
| 4   | In re: PHARMACEUTICAL )  | 4   | on behalf of bey, me., bey, En ., and mylan.  |
|   |  |   |   |
|   | •  |   | NEII MEDVI ESO  |
| 5   | INDUSTRY AVERAGE WHOLESALE )   | 5   | NEIL MERKL, ESQ.  |
| 5<br>6  | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6  | Kelley, Drye & Warren, LLP  |
| 5<br>6<br>7   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456  | 5<br>6<br>7   | Kelley, Drye & Warren, LLP<br>101 Park Avenue   |
| 5<br>6<br>7<br>8  | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No.  | 5<br>6<br>7<br>8  | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178   |
| 5<br>6<br>7<br>8<br>9   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS   | 5<br>6<br>7<br>8<br>9   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178<br>(212) 808-7811   |
| 5<br>6<br>7<br>8<br>9   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris   | 5<br>6<br>7<br>8<br>9<br>10   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris Laboratories, Inc., et al. )                            | 5<br>6<br>7<br>8<br>9<br>10<br>11   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178<br>(212) 808-7811   |
| 5<br>6<br>7<br>8<br>9   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris   | 5<br>6<br>7<br>8<br>9<br>10   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178<br>(212) 808-7811   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris Laboratories, Inc., et al. )                            | 5<br>6<br>7<br>8<br>9<br>10<br>11   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178<br>(212) 808-7811   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris Laboratories, Inc., et al. ) Case # 1:03-CV-11226-PBS ) | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | Kelley, Drye & Warren, LLP<br>101 Park Avenue<br>New York, New York 10178<br>(212) 808-7811<br>nmerkl@kelleydrye.com  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )) MDL NO. 1456 THIS DOCUMENT RELATES TO: ) Master File No. State of California ex rel. ) 01-12257-PBS Ven-A-Care v. Abbott ) Judge Patti B. Saris Laboratories, Inc., et al. ) Case # 1:03-CV-11226-PBS ) | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories: R. CHRISTOPHER COOK, ESQ.   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:  R. CHRISTOPHER COOK, ESQ. Jones Day  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:  R. CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, N.W.  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:  R. CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113                |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:  R. CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 (202) 879-3939 |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | INDUSTRY AVERAGE WHOLESALE ) PRICE LITIGATION )  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | Kelley, Drye & Warren, LLP 101 Park Avenue New York, New York 10178 (212) 808-7811 nmerkl@kelleydrye.com  On Behalf of Abbott Laboratories:  R. CHRISTOPHER COOK, ESQ. Jones Day 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113                |
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|----|--|----|---|
| 1  | APPEARANCES (Cont'd)                               | 1  | APPEARANCES (Cont'd)                                |
| 2  | On Behalf of the City of New York and all New York | 2  |   |
| 3  | Counties other than Nassau and Orange; the States  | 3  | On Behalf of Roxane Laboratories and Boehringer     |
| 4  | of Wisconsin, Illinois, Kentucky, Idaho, Alaska,   | 4  | Ingelheim   |
| 5  | Hawaii, South Carolina and Mississippi:            | 5  |   |
| 6  |  | 6  | ERIC GORTNER, ESQ. (via phone)                      |
| 7  | MICHAEL WINGET-HERNANDEZ, ESQ.                     | 7  | Kirkland & Ellis                                    |
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| 10 | Dripping Springs, Texas 78620                      | 10 | (312) 861-3452                                      |
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| 13 |  | 13 |   |
| 14 | On Behalf of the State of Alabama                  | 14 | On Behalf of Sandoz, Inc.                           |
| 15 |  | 15 |   |
| 16 | PAUL LYNN, ESQ. (via phone)                        | 16 | MILANA SALZMAN, ESQ. (via phone)                    |
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| 22 | paul.lynn@beasleyallen.com                         | 22 |   |
|    | D 240  |    | Day: 050  |
| 1  | Page 248 APPEARANCES (Cont'd)                      | 1  | Page 250 APPEARANCES (Cont'd)                       |
| 2  | ATTEARANCES (contu)                                | 2  | On Behalf of Schering-Plough Corporation, Schering  |
| 3  | On Behalf of the State of Florida                  | 3  | Corporation and Warrick Pharmaceuticals Corporation |
| 4  | on Bendin of the State of Florida                  | 4  | osiporation and trainoct narmacouncies corporation  |
| 5  | MARY S. MILLER, ESQ. (via phone)                   | 5  | BILLY WELLS, ESQ. (via phone)                       |
| 6  | Office of the Attorney General of Florida          | 6  | Locke, Lord, Bissell & Liddell                      |
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| 11 | 3_ 3   | 11 | bwells@lockeliddell.com                             |
| 12 |  | 12 |   |
| 13 | On Behalf of Bristol-Myers Squibb                  | 13 | On Behalf of Endo Pharmaceuticals, Inc.             |
| 14 | ·  | 14 |   |
| 15 | SANDHYA P. KAWATRA, ESQ. (via phone)               | 15 | VICTOR RORTVEDT, ESQ.                               |
| 16 | Hogan & Hartson                                    | 16 | Arnold & Porter, LLP                                |
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| 20 | spkawatra@hhlaw.com                                | 20 | victor.rortvedt@aporter.com                         |
| 21 |  | 21 |   |
| 22 |  | 22 | Also Present: Conway Barker, Videographer           |
| 21 | spkawatra@hhlaw.com                                | 21 | ·   |

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| 10   | •  | 10   | PBS.   |
| 11   | EXHIBITS   | 11   | This is the deposition of Dennis G.  |
| 12   | NUMBER DESCRIPTION PAGE  | 12   | Smith, volume 2. Today's date is March 27, 2008.   |
| 13   | Exhibit Abbott 585-Transcript of hearing on  | 13   | The location of the deposition is Jones Day, 51  |
| 14   | Medicaid prescription drug   | 14   | Louisiana Avenue, Northwest, Washington, D.C.  |
| 15   | reimbursement dated 12/7/04. 329   | 15   | Will counsel please identify yourselves  |
| 16   | Exhibit Dey 175 -Section 1927 of the Social  | 16   | and state whom you represent.  |
| 17   | Security Act 356   | 17   | MR. COOK: Christopher Cook from Jones  |
| 18   | Exhibit Dey 173A -CBO report: How the Medicaid   | 18   | Day. We represent Abbott Laboratories.   |
| 19   | rebate on prescription drugs   | 19   | MR. MERKL: Neil Merkl from Kelly, Drye   |
| 20   | affects pricing in the   | 20   | representing Dey.  |
| 21   | pharmaceutical industry  | 21   | MR. RORTVEDT: Victor Rortvedt from   |
| 22   | from 1/96 416  | 22   | Arnold & Porter representing Endo  |
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| 2  | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to                        | 2  | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  |
| 2<br>3<br>4  | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4  | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S.   |
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| 2<br>3<br>4<br>5<br>6<br>7   | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4<br>5<br>6<br>7   | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S. Department of Health and Human Services.  MR. WINGET-HERNANDEZ: Michael Winget- Hernandez for the City of New York, the New York  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4<br>5<br>6<br>7<br>8  | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S. Department of Health and Human Services.  MR. WINGET-HERNANDEZ: Michael Winget- Hernandez for the City of New York, the New York counties in MDL 1456, except for Nassau and  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20       | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S. Department of Health and Human Services.  MR. WINGET-HERNANDEZ: Michael Winget- Hernandez for the City of New York, the New York counties in MDL 1456, except for Nassau and Orange, the States of Illinois, Wisconsin, Kentucky, South Carolina, Idaho, Hawaii, Alaska to the extent that they have been cross-noticed here.  THE VIDEOGRAPHER: Those on the telephone, could you please identify yourselves.  MR. GORTNER: Eric Gortner from Kirkland & Ellis for Roxane Laboratories, Boehringer Ingelheim Corporation, and affiliated entities, including Ben Venue Laboratories in the   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21 | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19       | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S. Department of Health and Human Services.  MR. WINGET-HERNANDEZ: Michael Winget- Hernandez for the City of New York, the New York counties in MDL 1456, except for Nassau and Orange, the States of Illinois, Wisconsin, Kentucky, South Carolina, Idaho, Hawaii, Alaska to the extent that they have been cross-noticed here.  THE VIDEOGRAPHER: Those on the telephone, could you please identify yourselves.  MR. GORTNER: Eric Gortner from Kirkland & Ellis for Roxane Laboratories, Boehringer Ingelheim Corporation, and affiliated entities, including Ben Venue Laboratories in the cross-notice states and all other Boehringer entities in the cross-notice states.  MR. WELLS: Billy Wells with Locke, |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20       | E X H I B I T S (CONTINUED)  NUMBER DESCRIPTION PAGE  Exhibit BMS 001 -Letter from Smith to several state Medicaid | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | Pharmaceuticals.  MS. MARTINEZ: Ani Martinez for the United States.  MR. KELLEY: Brian Kelley for the U.S. Department of Health and Human Services.  MR. WINGET-HERNANDEZ: Michael Winget- Hernandez for the City of New York, the New York counties in MDL 1456, except for Nassau and Orange, the States of Illinois, Wisconsin, Kentucky, South Carolina, Idaho, Hawaii, Alaska to the extent that they have been cross-noticed here.  THE VIDEOGRAPHER: Those on the telephone, could you please identify yourselves.  MR. GORTNER: Eric Gortner from Kirkland & Ellis for Roxane Laboratories, Boehringer Ingelheim Corporation, and affiliated entities, including Ben Venue Laboratories in the cross-notice states and all other Boehringer entities in the cross-notice states.                                     |

4 (Pages 251 to 254)

# EXHIBIT BB



#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION MDL No.1456 Master File No. 01-CV-12257-PBS

Judge Patti B. Saris

#### THIS DOCUMENT RELATES TO:

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Boehringer Ingelheim Corporation, et al., Civil Action No. 07-10248-PBS

#### CROSS-NOTICE OF CONTINUED DEPOSITION OF DON THOMPSON

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, the Roxane Defendants, by their undersigned attorneys, hereby cross-notice the continued deposition of Don Thompson for the purposes of the above-captioned action. This deposition was noticed in *United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.*, No. 06-CV-11337-PBS, a case pending in the United States District Court for the District of Massachusetts ("Abbott Action"). A copy of the continued deposition notice, served on April 14, 2008 in the Abbott Action, is attached as Exhibit 1 hereto.

Mr. Thompson's deposition will continue at 9:00 a.m. on April 23, 2008 before a duly qualified officer and continue on successive days as necessary. The deposition shall be held at the law offices of Jones Day, 51 Louisiana Ave. N.W., Washington, D.C. 20001, and will be recorded by stenographic and/or sound and visual means. The deposition will be taken upon cross-examination. Arrangements will be made so that counsel may participate by telephone if they wish. The deposition is being taken for the purposes of discovery, for use at trial, and for other such purposes as permitted under the Federal Rules of Civil Procedure.

Dated: April 14, 2008

/s/ Eric T. Gortner

Helen E. Witt, P.C. Eric T. Gortner Jared T. Heck KIRKLAND & ELLIS LLP 200 East Randolph Drive Chicago, IL 60601 Telephone: (312) 861-2000

Facsimile: (312) 861-2200

/s/ Bruce A. Singal

Bruce A. Singal, BBO #464420 Richard Goldstein, BBO #565482 DONOGHUE BARRETT & SINGAL, P.C. One Beacon Street Boston, MA 02018

Telephone: (617) 720-5090 Facsimile: (617) 720-5092

Counsel for Defendants Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., and Roxane Laboratories, Inc.

#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on April 14, 2008, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ Eric T. Gortner Eric T. Gortner

# EXHIBIT BB-1

### United States of America (F. Don Thompson)

| JRT         |
|-------------|
| SETTS       |
|             |
| 1456        |
| ACTION      |
| L2257-PBS   |
|             |
| Patti B.    |
|             |
|             |
| Magistrate  |
| Marianne B. |
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|             |
| g pages)    |
|             |
| С.          |
| 28, 2008    |
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| ON as       |
| AMERICA     |
|             |
|             |

### United States of America (F. Don Thompson)

|         | 1  | IN THE COURT OF THE SECOND JUD      | ICIAL CIRCUIT  |
|---------|----|-------------------------------------|----------------|
|         | 2  | IN AND FOR LEON COUNTY, I           | FLORIDA        |
|         | 3  | THE STATE OF FLORIDA                |                |
|         | 4  | ex rel.                             |                |
|         | 5  |                                     |                |
|         | 6  | VEN-A-CARE OF THE FLORIDA KEYS,     | )              |
|         | 7  | INC., a Florida Corporation, by and | )              |
|         | 8  | through its principal officers and  | )              |
|         | 9  | directors, ZACHARY T. BENTLEY and   | )              |
|         | 10 | T. MARK JONES,                      | )              |
|         | 11 | Plaintiffs,                         | ) Civil Action |
|         | 12 | VS.                                 | ) No. 98-3032G |
|         | 13 | MYLAN LABORATORIES INC.; MYLAN      | )              |
| William | 14 | PHARMACEUTICALS INC.; NOVOPHARM     | ) Judge        |
|         | 15 | LTD., SCHEIN PHARMACEUTICAL, INC.;  | ) L. Gary      |
|         | 16 | TEVA PHARMACEUTICAL INDUSTRIES      | )              |
|         | 17 | LTD.; TEVA PHARMACEUTICAL USA; and  | )              |
|         | 18 | WATSON PHARMACEUTICALS, INC.,       | )              |
|         | 19 | DEFENDANTS.                         | )              |
|         | 20 |                                     |                |
|         | 21 | Page 2                              |                |

United States of America (F. Don Thompson) 22 3 1 Videotaped 30(b)(6) deposition of THE UNITED 2 STATES OF AMERICA by F. DON THOMPSON, held at the law offices of Jones Day, 51 Louisiana Avenue, 3 N.W., washington, D.C. 20001-2113, the proceedings being 4 recorded stenographically by Jonathan Wonnell, a 5 Registered Professional Court Reporter and Notary 6 Public of the District of Columbia, and transcribed under his direction. 8 9 10 11 12 13 14

Page 3

15

16

17

### United States of America (F. Don Thompson)

|          | Т  | APPEARANCES OF COUNSEL                     |
|----------|----|--|
|          | 2  |  |
|          | 3  | On behalf of the United States of America: |
|          | 4  | JUSTIN DRAYCOTT, ESQ.                      |
|          | 5  | U.S. Department of Justice                 |
|          | 6  | Civil Division                             |
|          | 7  | P.O. Box 261, Ben Franklin Station         |
|          | 8  | Washington, D.C. 20044                     |
|          | 9  | (202) 305-9300                             |
|          | 10 | justin.draycott@usdoj.gov                  |
|          | 11 |  |
| and      | 12 | On behalf of the U.S. Department of Health |
|          | 13 | Human Services:                            |
|          | 14 | LESLIE M. STAFFORD, ESQ.                   |
| Services | 15 | U.S. Department of Health & Human          |
|          |    |  |

|           | United<br>16 | States | of America (F. Don Thompson)<br>Office of General Counsel, CMS Division |
|-----------|--------------|--------|---|
|           | 17           |        | 7500 Security Boulevard   |
|           | 18           |        | Mail Stop C2-05-23  |
|           | 19           |        | Baltimore, Maryland 21244   |
|           | 20           |        | (410) 786-9655  |
|           | 21           |        |   |
|           | 22           |        |   |
|           |              |        |   |
|           |              |        |   |
| п         |              |        |   |
| 5         |              |        |   |
| 3         |              |        |   |
|           |              |        |   |
|           |              |        |   |
|           | 1            |        | APPEARANCES (Cont'd)  |
|           | 2            |        |   |
|           | 3            | on be  | ehalf of the State of Florida:  |
|           | 4            |        | MARY S. MILLER, ESQ. (via phone)  |
| Florida   | 5            |        | Office of the Attorney General of                                       |
| 1 101 144 | 6            |        | PL-01, The Capitol  |
|           | 7            |        | Tallahassee, Florida 32399-1050   |
|           | 8            |        | (850) 414-3600  |
|           | 9            |        | mary_miller@oag.state.fl.us   |
|           | 10           |        | mary_mrrrereougrseacerrrus  |
|           | 11           | On he  | ehalf of the City of New York and all                                   |
| New       | <b></b>      | 3 50   | in the state of the form and are  |
|           | 12           |        | York Counties other than Nassau and                                     |
|           | 13           |        | Orange; and the States of Alaska,<br>Page 5                             |

United States of America (F. Don Thompson) Hawaii, Idaho, Illinois, Kentucky, South 14 Carolina 15 and Wisconsin: 16 MICHAEL WINGET-HERNANDEZ, ESQ. Winget-Hernandez, LLC 17 3112 Windsor Road, Suite 228 18 Austin, Texas 78703 19 20 (512) 858-4181 21 michael@winget-hernandez.com 22

| 1  | APPEARANCES (Cont'd)                    |
|----|---|
| 2  |   |
| 3  | On behalf of Abbott Laboratories, Inc.: |
| 4  | R. CHRISTOPHER COOK, ESQ.               |
| 5  | Jones Day                               |
| 6  | 51 Louisiana Avenue, N.W.               |
| 7  | Washington, D.C. 20001-2113             |
| 8  | (202) 879-3939                          |
| 9  | christophercook@jonesday.com            |
| 10 |   |

```
United States of America (F. Don Thompson)
                   On behalf of Dey, Inc., Dey, L.P. and Mylan:
        11
        12
                        SARAH L. REID, ESQ.
        13
                        Kelley, Drye & Warren LLP
        14
                        101 Park Avenue
        15
                        New York, New York 10178
        16
                        (212) 808-7720
        17
                        sreid@kelleydrye.com
        18
        19
        20
        21
                   ALSO PRESENT:
        22
                        CONWAY BARKER, videographer
П
      7
         1
                                CONTENTS
          2
          3
             WITNESS NAME
PAGE
             F. DON THOMPSON
          4
          5
                  Examination By Mr. Cook.....
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          6
          7
                                EXHIBITS
          8
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## **EXHIBIT CC**



#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| IN RE: PHARMACEUTICAL INDUSTRY               | ) MDL NO. 1456                              |
|--|---|
| AVERAGE WHOLESALE PRICE                      | )   |
| LITIGATION                                   | ) CIVIL ACTION: 01-CV-12257-PBS             |
|  | )   |
|  | ) Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO                     | )   |
| U.S. ex rel. Ven-A-Care of the Florida Keys, | ) Chief Magistrate Judge Marianne B. Bowler |
| Inc. v. Abbott Laboratories, Inc., et al.    | )   |
| No. 06-CV-11337-PBS                          | )   |

#### AMENDED NOTICE OF DEPOSITION OF DAVID TIMUS

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of David Timus.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of the Center for Medicare & Medicaid Services, 7111 Security Boulevard, Baltimore, Maryland 21244 on June 6, 2007 beginning at 9:00 a.m. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: May 25, 2007

/s/ R. Christopher Cook

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

#### **CERTIFICATE OF SERVICE**

I, R. Christopher Cook, an attorney, hereby certify that I caused a true and correct copy of the foregoing AMENDED NOTICE OF DEPOSITION OF DAVID TIMUS to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 25<sup>th</sup> day of May, 2007.

/s/ R. Christopher Cook
R. Christopher Cook

## **EXHIBIT CC-1**

| UNITED STATES DISTRICT COURT                      |
|---|
| FOR THE DISTRICT OF MASSACHUSETTS                 |
| x   |
| IN RE: PHARMACEUTICAL : MDL NO. 1456              |
| INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:        |
| PRICE LITIGATION : 01-CV-12257-PBS                |
| THIS DOCUMENT RELATES TO :                        |
| U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris |
| the Florida Keys, Inc. v. :                       |
| Abbott Laboratories, Inc., : Chief Magistrate     |
| No. 06-CV-11337-PBS : Judge Marianne B.           |
| x Bowler  |
| IN THE CIRCUIT COURT OF                           |
| MONTGOMERY COUNTY, ALABAMA                        |
| x   |
| STATE OF ALABAMA, :                               |
| Plaintiff, :                                      |
| vs. : Case No.: CV-05-219                         |
| ABBOTT LABORATORIES, INC., : Judge Charles Price  |
| et al., :   |
| Defendants.:                                      |
| x   |
|   |

|         | 1  | IN THE COURT OF THE SECOND JUDICIAL CIRCUIT |                 |
|---------|----|---|-----------------|
|         | 2  | IN AND FOR LEON COUNTY, F                   | LORIDA          |
|         | 3  |   |                 |
|         | 4  | THE STATE OF FLORIDA                        |                 |
|         | 5  | ex rel.                                     |                 |
|         | 6  |   | x               |
|         | 7  | VEN-A-CARE OF THE FLORIDA                   | :               |
|         | 8  | KEYS, INC., a Florida                       | :               |
|         | 9  | Corporation, by and through its             | :               |
|         | 10 | principal officers and directors,           | :               |
|         | 11 | ZACHARY T. BENTLEY and                      | :               |
|         | 12 | T. MARK JONES,                              | :               |
|         | 13 | Plaintiffs,                                 | :               |
| william | 14 | VS.   | : Civil Action  |
|         | 15 | MYLAN LABORATORIES INC.; MYLAN              | : No.: 98-3032G |
|         | 16 | PHARMACEUTICALS INC.; NOVOPHARM             | : Judge:        |
|         | 17 | LTD., SCHEIN PHARMACEUTICAL, INC.           | ;: L. Gary      |
|         | 18 | TEVA PHARMACEUTICAL INDUSTRIES              | :               |
|         | 19 | LTD., TEVA PHARMACEUTICAL USA;              | :               |
|         | 20 | and WATSON PHARMACEUTICALS, INC.,           | :               |
|         | 21 | Defendants,                                 | :               |
|         | 22 | Page 2                                      | X               |

|    | 1  | IN THE CIRCUIT COURT OF THE CITY | Y OF ST. LOUIS |  |
|----|----|----------------------------------|----------------|--|
|    | 2  | STATE OF MISSOURI                |                |  |
|    | 3  |                                  | x              |  |
|    | 4  | STATE OF MISSOURI, ex rel.,      | :              |  |
|    | 5  | JEREMIAH W. (JAY) NIXON,         | :              |  |
|    | 6  | Attorney General,                | :              |  |
|    | 7  | and                              | :              |  |
|    | 8  | MISSOURI DEPARTMENT OF SOCIAL    | :              |  |
| 31 | 9  | SERVICES, DIVISION OF MEDICAL    | : Case No.:    |  |
|    | 10 | SERVICES,                        | : 054-1216     |  |
|    | 11 | Plaintiffs,                      | : Division No. |  |
|    | 12 | VS.                              | :              |  |
|    | 13 | DEY INC., DEY, L.P., MERCK KGaA, | :              |  |
|    | 14 | EMD, INC., WARRICK               | :              |  |
|    | 15 | PHARMACEUTICALS CORPORATION,     | :              |  |
|    | 16 | SCHERING-PLOUGH CORPORATION, and | :              |  |
|    | 17 | SCHERING CORPORATION,            | :              |  |
|    | 18 | Defendants,                      | :              |  |
|    | 19 |                                  | x              |  |
|    | 20 | Page 3                           |                |  |

21

22

| TIMUS, | 1  | Videotaped Deposition of DAVID M.                  |
|--------|----|--|
| ·      | 2  | SR., a witness herein, called for examination by   |
|        | 3  | counsel for Abbott Laboratories in the             |
|        | 4  | above-entitled matter, pursuant to notice, the     |
|        | 5  | witness being duly sworn by Robert M. Jakupciak, a |
|        | 6  | Notary Public in and for the District of Columbia, |
|        | 7  | taken at the offices of Center for Medicare &      |
|        | 8  | Medicaid Services, 7111 Security Blvd., Baltimore, |
|        | 9  | Maryland, 21244, at 11:20 a.m., on June 6, 2007,   |
|        | 10 | and the proceedings being taken down by Stenotype  |
|        | 11 | by Robert M. Jakupciak, RPR.                       |
|        | 12 |  |
|        | 13 |  |
|        | 14 |  |
|        | 15 |  |
|        | 16 |  |
|        | 17 |  |
|        | 18 |  |

| 1  | APPEARANCES:                               |
|----|--|
| 2  |  |
| 3  | On behalf of the United States of America: |
| 4  |  |
| 5  | ANA MARIA MARTINEZ, ESQUIRE                |
| 6  | U.S. Department of Justice                 |
| 7  | 99 N.E. 4th Street                         |
| 8  | Miami, Florida 33132                       |
| 9  | (305) 961-9431                             |
| 10 |  |
| 11 | On behalf of the U.S. Department of        |
| 12 | Health and Human Services:                 |
| 13 |  |
| 14 | TROY A. BARSKY, ESQUIRE                    |
| 15 | U.S. Department of Health and              |
| 16 | Human Services                             |
|    | Page 5                                     |

```
Timus, Sr, David M C2-05-23
  17
                  7500 Security Blvd.
  18
  19
                  Baltimore, Maryland 21244-1850
  20
                  (410) 786-8873
  21
  22
       (CONTINUED)
6
       APPEARANCES: (CONTINUED)
   1
   2
       On behalf of Abbott Laboratories:
   3
   4
   5
                  LOUIS P. GABEL, ESQUIRE
   6
                  Jones Day
   7
                  51 Louisiana Avenue, N.W.
   8
                  Washington, D.C. 20001
   9
                  (202) 879-5411
  10
  11
       (The following attorneys present by phone.)
  12
       On behalf of Dey Companies and Mylan:
  13
```

CLIFFORD KATZ, ESQUIRE

Page 6

14

Timus, Sr, David M 16 Kelly Drye & Warren LLP 17 101 Park Avenue 18 New York, New York 10178 19 (212) 808-7609 20 21 22 (CONTINUED) 7 APPEARANCES: (CONTINUED) 1 2 3 On behalf of Roxane Laboratories and Boehringer-Ingelheim and affiliated entities: 4 5 6 JARED THOMAS HECK, ESQUIRE Kirkland & Ellis LLP 7 200 East Randolph Drive 8 Chicago, Illinois 9 60601 10 (312) 469-7087 11 On behalf of Baxter Healthcare Corporation: 12 13

Timus, Sr, David M TINA DUCHARME REYNOLDS, ESQUIRE Dickstein Shapiro LLP 1825 Eye Street, N.W. Washington, D.C. (202) 420-4114 (CONTINUED)

```
1
     APPEARANCES: (CONTINUED)
 2
     On behalf of KMS New York Counties:
 3
 4
               MICHAEL WINGET-HERNANDEZ, ESQUIRE
 5
 6
               Winget-Hernandez, LLC
 7
               3112 Windsor Road, #228
               Austin, Texas 78703
 8
 9
10
11
12
                     Page 8
```

## Timus, Sr, David M Also Present Videographer: Conway Barker $\mathsf{C} \quad \mathsf{O} \quad \mathsf{N} \quad \mathsf{T} \quad \mathsf{E} \quad \mathsf{N} \quad \mathsf{T} \quad \mathsf{S}$ THE WITNESS: DAVID M. TIMUS, SR. Examination By Mr. Gabel..... EXHIBITS

**PAGE** 

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(NONE MARKED)

## **EXHIBIT DD**



## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

| IN RE PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE<br>LITIGATION | MDL No. 1456  Civil Action No. 01-12257-PBS   |  |
|--|---|--|
| THIS DOCUMENT RELATES TO:  ALL ACTIONS <sup>1</sup>                    | <ul> <li>) Judge Patti B. Saris</li> <li>) Magistrate Judge Marianne B. Bowler</li> </ul> |  |
|  | )   |  |

#### AMENDED CROSS-NOTICE OF DEPOSITION OF ROBERT VITO

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, Schering Corporation ("Schering"), Schering Plough Corporation ("Schering Plough"), and Warrick Pharmaceuticals Corporation ("Warrick")<sup>2</sup> hereby cross-notice the deposition of Robert Vito for purposes of all cases pending in MDL No. 1456.

On May 21, 2007, attorneys for Abbott Laboratories, Inc. amended the notice of deposition of Mr. Vito for purposes of *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*, No. 06-CV-11337-PBS, a matter that is currently a part of MDL No. 1456. This notice is attached hereto. Through this cross-notice, counsel are hereby informed that the deposition of Mr. Vito will also be proceeding for purposes of all other cases pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>1</sup> As explained herein, this cross-notice regards all actions pending in MDL No. 1456, to the extent permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

<sup>&</sup>lt;sup>2</sup> This cross-notice, which is being served for purposes of a number of actions pending in MDL No. 1456, is only served in a particular action on behalf of those entities that have appeared, been named, and been served in that particular action. To the extent that Schering, Schering Plough, or Warrick have not appeared, been served, or been named in a particular action, this notice does not constitute an appearance, consent to service, or consent to joinder

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103, on June 19 and 20, 2007 beginning at 9:00 a.m. The attached subpoena *duces tecum* directs the witness to appear for the deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure, Court order, and any other applicable rules.

By attorneys,

/s/ Eric P. Christofferson

John T. Montgomery (BBO#352220) Steven A. Kaufman (BBO#262230) Eric P. Christofferson (BBO#654087)

Ropes & Gray LLP One International Place Boston, Massachusetts 02110-2624 (617) 951-7000

Attorneys for Schering Corporation, Schering-Plough Corporation, and Warrick

Pharmaceuticals Corporation

Dated: May 22, 2007

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Jobe G. Danganan
Jobe G. Danganan



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

| N RE: PHARMACEUTICAL INDUSTRY   | )         | MDL NO. 1456                              |
|---|-----------|---|
| AVERAGE WHOLESALE PRICE<br>LITIGATION   | )         | CIVIL ACTION: 01-CV-12257-PBS             |
| THE DOCUMENT DELATES TO   | )         | Judge Patti B. Saris                      |
| THIS DOCUMENT RELATES TO U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al. | )         | Chief Magistrate Judge Marianne B. Bowler |
| No. 06-CV-11337-PBS   | $\vec{a}$ |   |

#### AMENDED NOTICE OF DEPOSITION OF ROBERT VITO

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(1) of the Federal Rules of Civil Procedure, Abbott Laboratories, Inc. ("Abbott") by its undersigned attorneys, will take the deposition of Robert Vito.

The deposition will take place before a notary public, or any other officer authorized to administer oaths, at the office of Morgan Lewis, 1701 Market Street, Philadelphia, PA 19103, on June 19 and 20, 2007 beginning at 9:00 a.m. and continuing on successive days as necessary. The attached subpoena *duces tecum* directs the witness to appear for deposition and produce certain documents. The deposition will be taken upon cross-examination.

Such deposition will be recorded by stenographic and/or sound and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

Dated: May 21, 2007

/s/ David S. Torborg

James R. Daly Tina M. Tabacchi Brian J. Murray JONES DAY

77 West Wacker Drive, Suite 3500

Chicago, Illinois 60601 Telephone: (312) 782-3939 Facsimile: (312) 782-8585

R. Christopher Cook David S. Torborg JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Telephone: (202) 879-3939 Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

# **CERTIFICATE OF SERVICE**

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing AMENDED NOTICE OF DEPOSITION OF ROBERT VITO, and attachments, to be served upon all counsel of record electronically by causing same to be posted via LexisNexis, this 21<sup>st</sup> day of May, 2007.

/s/ David S. Torborg
David S. Torborg

# UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA



IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Pending in:

THIS DOCUMENT RELATES TO

U.S. ex rel. Ven-A-Care of the Florida Keys, Inc., v. Abbott Laboratories, Inc., et al.

MDL NO. 1456

Civil Action No. 06-CV-11337-PBS Lead Case No. 01-CV-12257

Judge Patti B. Saris

|                 |   | onier Magistrate Judge Marianne B. Bowler                              |
|-----------------|---|--|
|                 | s   | UBPOENA DUCES TECUM  |
| TO:             | Robert Vito   |  |
|                 | Care of:  |  |
|                 | John K. Neal, Esq.  |  |
|                 | P.O. Box 261  |  |
|                 | Ben Franklin Station  |  |
|                 | Washington, D.C. 20044  |  |
|                 | OU ARE COMMANDED to appear in the United Str  | tes District Court at the place, date, and time                        |
| specif          | ied below to testify in the above case. or TESTIMONY  |  |
|                 |   | COURTROOM  |
| <del>7</del>    |   | DATÉ AND TIME  |
| ≥ Yo<br>a depo  | OU ARE COMMANDED to appear at the place, date osition in the above case.  | , and time specified below to testify at the taking of                 |
| PLACE           | of deposition   | DATE AND TIME  |
|                 | gan Lewis   |  |
|                 | Market Street   | June 19 and 20, 2007 at 9:00 AM  |
|                 | adelphia, PA 19103  |  |
| ——              | OU ARE COMMANDED to produce and permit insp<br>s at the place, date, and time specified below (list of<br>Please see attached Exhibit A | ection and copying of the following documents or ocuments or objects): |
| PLACE           |   | DATE AND TIME  |
| Morg            | gan Lewis   |  |
| 1701            | Market Street   | June 19 and 20, 2007 at 9:00 AM  |
| Phila           | idelphia, PA 19103  |  |
| ∏ YO¹<br>below. | U ARE COMMANDED to permit inspection of the f   | ollowing premises at the date and time specified                       |
| PREMIS          | DES   | DATE AND TIME  |
| An              | y organization not a party to this suit that is subp  |  |
| aesign:         | ate one or more officers, directors, or managing ag   | ents, or other persons who consent to testify an ite-                  |
| Rules (         | and may set forth, for each person designated, the of Civil Procedure, 30(b)(6).  | matters on which the person will testify. Federal                      |
| ISSUING         | GOFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAI   | NTEFF OR DATE  |
| 7/-             | It tails  | May 21, 2007   |
| Attorn          | ey for Delendant Abbott Laboratories, Inc.  | , , , , , , , , , , , , , , , , , , ,                                  |
| ISSUING         | OFFICER'S NAME, ADDRESS AND PHONE NUMBER: David S. Torbor<br>2021 879-3939  | g, Esq., Jones Day, 51 Louisiana Ave., N.W., Washington, DC            |

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

#### PROTECTION OF PERSONS SUBJECT TO SUBPOENAS. (C)

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party service the subpoena shall not be entitled to inspect and copy materials or inspect the premises expect pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
  - (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
  - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

#### (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or (iii) requires a person who is not a party of an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

### (d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

#### EXHIBIT A

## **Documents Requested**

- 1. A copy of your most current resume.
- 2. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs. This request does not seek documents contained at the offices of the United States Department of Health and Human Services Office of Inspector General.
- 3. A copy of any and all Documents in your personal possession concerning the use of AWP or WAC by the Medicare or Medicaid programs for the reimbursement of drugs and/or the administration or dispensing of drugs.
- 4. A copy of any and all Documents in your personal possession concerning communications with Ven-A-Care of the Florida Keys, Inc., Centers for Medicare and Medicaid Services ("CMS") (including the office of the General Counsel), and/or any party which is a plaintiff in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.
- 5. A copy of any and all Documents in your personal possession concerning communications with the Department of Justice ("DOJ") or CMS regarding limitations on communications with any party which is a defendant in any litigation relating to AWP, WAC, and/or the pricing of drugs under Medicare or Medicaid.

#### **Definitions**

- 1. "AWP" or "Average Wholesale Price" means any figures so categorized and periodically published by any Publisher.
- 2. "Concern," "concerning," "relating to," or "relate to" means refer to, regard, concern, describe, explain, state, evidence, record, constitute, pertain to, reflect, comprise, contain, embody, mention, show, support, contradict, and discuss, whether directly or indirectly, as required by the context to bring within the scope of the requests in this request for production of documents any documents that might be deemed outside their scope by another construction.
- 3. "Documents" means all original written, recorded, or graphic matters whatsoever, and any and all non-identical copies thereof, including but not limited to advertisements, affidavits, agreements, analyses, applications, appointment books, bills, binders, books, books of account, brochures, calendars, charts, checks or other records of payment, communications, computer printouts, computer stores data, conferences, or other meetings, contracts,

correspondence, diaries, electronic mail, evaluations, facsimiles, files, filings, folders, forms, interviews, invoices, jottings, letters, lists, manuals, memoranda, microfilm or other data compilations from which information can be derived, minutes, notations, notebooks, notes, opinions, pamphlets, papers, photocopies, photographs or other visual images, policies, recordings of telephone or other conversations, records, reports, resumes, schedules, scraps of paper, statements, studies, summaries, tangible things, tapes, telegraphs, telephone logs, telex messages, transcripts, website postings, and work papers, which are in the possession of the Carrier as defined above. A draft or non-identical copy is a separate document within the meaning of this term.

4. "WAC" means "Wholesale Acquisition Cost."

# **EXHIBIT DD-1**

| 1  | UNITED STATES DISTRICT COURT                  | Page 1 |
|----|---|--------|
| 2  | FOR THE DISTRICT OF MASSACHUSETTS             |        |
| 3  |   |        |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456          |        |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:    |        |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS            |        |
| 7  | :   |        |
| 8  | THIS DOCUMENT RELATES TO :                    |        |
| 9  | U.S. ex rel. Ven-A-Care of :                  |        |
| 10 | the Florida Keys, Inc. v. :                   |        |
| 11 | Abbott Laboratories, Inc. :                   |        |
| 12 | No. 06-CV-11337-PBS :                         |        |
| 13 |   |        |
| 14 | Videotaped deposition of ROBERT               |        |
| 15 | VITO was taken, pursuant to notice, at MORGAN |        |
| 16 | LEWIS & BOCKIUS, LLP, 1701 Market Street,     |        |
| 17 | Philadelphia, Pennsylvania, on Tuesday, June  |        |
| 18 | 19, 2007, beginning at 9:10 a.m., before M.   |        |
| 19 | Kathleen Muino, Professional Shorthand        |        |
| 20 | Reporter, Notary Public; Michael Hunterton,   |        |
| 21 | Certified Legal Video Specialist, there being |        |
| 22 | present:                                      |        |
|    |   |        |

| 1        | Page 2 APPEARANCES:                 | 1        | Page 4 APPEARANCES (Continued):                  |
|----------|-------------------------------------|----------|--|
| 2        |                                     | 2        | · · ·  |
| 3        | UNITED STATES DEPARTMENT OF JUSTICE | 3        | BERGER & MONTAGUE, P.C.                          |
| 4        | CIVIL DIVISION                      | 4        | BY: GARY L. AZORSKY, ESQUIRE                     |
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| 11       | •                                   | 11       |  |
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|          | Page 3                              |          | Page 5   |
| 1        | APPEARANCES (Continued):            | 1        | APPEARANCES (Continued):                         |
| 2        |                                     | 2        | STATE OF CALIFORNIA DEPARTMENT                   |
| 3        | U.S. DEPARTMENT OF HEALTH & HUMAN   | 3        | OF JUSTICE                                       |
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| 5        | Office of Inspector General         | 5        | BY: NICHOLAS N. PAUL, DEPUTY                     |
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|--|--|--|--|
| 1  | APPEARANCES (Continued):   | 1  | APPEARANCES (Continued):   |
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|  | Page 7   |  | Page 9   |
| 1  | Page 7 APPEARANCES (Continued):  | 1  | Page 9 APPEARANCES (Continued):  |
| 1 2  |  | 1 2  |  |
|  |  |  |  |
| 2  | APPEARANCES (Continued):   | 2  | APPEARANCES (Continued):   |
| 2  | APPEARANCES (Continued):  JONES DAY  | 2  | APPEARANCES (Continued):  HAND ARENDALL, LLC   |
| 2<br>3<br>4  | APPEARANCES (Continued):  JONES DAY BY: DAVID S. TORBORG, ESQUIRE  | 2<br>3<br>4  | APPEARANCES (Continued):  HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE   |
| 2<br>3<br>4<br>5   | APPEARANCES (Continued):  JONES DAY BY: DAVID S. TORBORG, ESQUIRE 51 Louisiana Avenue, N.W.  | 2<br>3<br>4<br>5   | APPEARANCES (Continued):  HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE 1200 Park Place Tower   |
| 2<br>3<br>4<br>5<br>6  | APPEARANCES (Continued):  JONES DAY BY: DAVID S. TORBORG, ESQUIRE 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113  | 2<br>3<br>4<br>5<br>6  | APPEARANCES (Continued):  HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE 1200 Park Place Tower 2001 Park Place North   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                         | JONES DAY BY: DAVID S. TORBORG, ESQUIRE 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Phone: (202) 879-5562 dstorborg@jonesday.com Representing Abbott Laboratories, Inc.  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14                                     | APPEARANCES (Continued):  HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 Phone: (205) 502-0105 rbates@handarendall.com Representing The State of Alabama  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | JONES DAY BY: DAVID S. TORBORG, ESQUIRE 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Phone: (202) 879-5562 dstorborg@jonesday.com Representing Abbott Laboratories, Inc.  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811                       | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15                               | APPEARANCES (Continued):  HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 Phone: (205) 502-0105 rbates@handarendall.com Representing The State of Alabama  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793                       |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | JONES DAY BY: DAVID S. TORBORG, ESQUIRE 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 Phone: (202) 879-5562 dstorborg@jonesday.com Representing Abbott Laboratories, Inc.  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                   | HAND ARENDALL, LLC BY: ROGER L. BATES, ESQUIRE 1200 Park Place Tower 2001 Park Place North Birmingham, Alabama 35203 Phone: (205) 502-0105 rbates@handarendall.com Representing The State of Alabama  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 rwalters@kirkland.com     |
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| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19 | TELEPHONIC APPEARANCES:  WHITE & CASE, LLP BY: MILANA SALZMAN, ESQUIRE 1155 Avenue of the Americas New York, New York 10036-2787 Phone: (212) 819-8711 msalzman@whitecase.com Representing Sandoz Inc.  DICKSTEIN SHAPIRO, LLP BY: SHAMIR PATEL, ESQUIRE 1825 Eye Street, NW Washington, DC 20006 Phone: (202) 420-2728 PatelS@dicksteinshapiro.com Representing Baxter Healthcare Corporation | Page 10 | 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19                      | TELEPHONIC APPEARANCES (Continued)  HOGAN & HARTSON LLP BY: JOSEPH H. YOUNG, ESQUIRE 111 South Calvert Street Baltimore, Maryland 21202 Phone: (410) 659-2700 jhyoung@hhlaw.com Representing Amgen  ALSO PRESENT: Mary-Margaret Buchanan JONES DAY  John M. Lockwood, M.D. VEN-A-CARE OF THE FLORIDA KEY   |   |
| 20<br>21  |  |         | 20<br>21   |  |   |
| 22  |  |         | 22   |  |   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | TELEPHONIC APPEARANCES (Continued):  HOGAN & HARTSON, LLP BY: HOA T.T. HOANG, ESQUIRE BY: JAMES S. ZUCKER, ESQUIRE 875 Third Avenue New York, New York 10022 Phone: (212) 918-3640/3650 htthoang@hhlaw.com jszucker@hhlaw.com  | Page 11 | 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9                            | INDEX  ROBERT VITO EXAMINATION PAGE BY MR. TORBORG 17  | Page 13   |
| 10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22                            | Representing Bristol-Myers Squibb Company  KAYE SCHOLER LLP BY: NATHAN COHEN, ESQUIRE 425 Park Avenue New York, New York 10022 Phone: (212) 836-7418 ncohen@kayescholer.com Representing Novartis Pharmaceuticals Corporation  |         | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | NUMBER DESCRIPTION Exhibit Abbott 228 HHD068-1554 - 1557 Exhibit Abbott 229 HHD068-0210 - 0216 Exhibit Abbott 230 HHD068-1498 - 1502 Exhibit Abbott 231 HHD067-0092 Exhibit Abbott 232 HHD042-0018 - 0020 Exhibit Abbott 233 HHD062-1211 - 1212 Exhibit Abbott 234 HHD068-0977 - 1029 Exhibit Abbott 235 Declaration of Robert A. Vito 228 Exhibit Abbott 236 HHD042-0275 - 0277 | PAGE<br>103<br>109<br>112<br>125<br>147<br>161<br>167 |

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| 1  | UNITED STATES DISTRICT COURT                   |          |
| 2  | FOR THE DISTRICT OF MASSACHUSETTS              |          |
| 3  | VOLUME II                                      |          |
| 4  | IN RE: PHARMACEUTICAL : MDL NO. 1456           |          |
| 5  | INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:     |          |
| 6  | PRICE LITIGATION : 01-CV-12257-PBS             |          |
| 7  | :  |          |
| 8  | THIS DOCUMENT RELATES TO :                     |          |
| 9  | U.S. ex rel. Ven-A-Care of :                   |          |
| 10 | the Florida Keys, Inc. v. :                    |          |
| 11 | Abbott Laboratories, Inc. :                    |          |
| 12 | No. 06-CV-11337-PBS :                          |          |
| 13 |  |          |
| 14 | Continuation of the videotaped                 |          |
| 15 | deposition of ROBERT VITO was taken, pursuant  |          |
| 16 | to notice, at MORGAN LEWIS & BOCKIUS, LLP,     |          |
| 17 | 1701 Market Street, Philadelphia,              |          |
| 18 | Pennsylvania, on Wednesday, June 20, 2007,     |          |
| 19 | beginning at 8:43 a.m., before M. Kathleen     |          |
| 20 | Muino, Professional Shorthand Reporter, Notary |          |
| 21 | Public; Michael Hunterton, Certified Legal     |          |
| 22 | Video Specialist, there being present:         |          |
|    |  |          |

|  | Page 290  | 1  | Page 292   |
|--|---|--|--|
| 1 2  | APPEARANCES:  | 2  | APPEARANCES (Continued):   |
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|  |   |  |  |
|  | Page 291  |  | Page 293   |
| 1  | Page 291 APPEARANCES (Continued):   | 1  | APPEARANCES (Continued):   |
| 2  | APPEARANCES (Continued):  | 2  | APPEARANCES (Continued): STATE OF CALIFORNIA DEPARTMENT  |
| 2 3  | APPEARANCES (Continued):  U.S. DEPARTMENT OF HEALTH & HUMAN   | 2 3  | APPEARANCES (Continued): STATE OF CALIFORNIA DEPARTMENT OF JUSTICE   |
| 2<br>3<br>4  | APPEARANCES (Continued):  U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  | 2<br>3<br>4  | APPEARANCES (Continued): STATE OF CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE  |
| 2<br>3<br>4<br>5   | APPEARANCES (Continued):  U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General  | 2<br>3<br>4<br>5   | APPEARANCES (Continued): STATE OF CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF MEDI-CAL FRAUD & ELDER ABUSE BY: NICHOLAS N. PAUL, DEPUTY   |
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| 1  | Page 295 APPEARANCES (Continued):   | 1  | Page 297 APPEARANCES (Continued):  |
| 1 2  | Page 295 APPEARANCES (Continued):   | 1 2  | Page 297 APPEARANCES (Continued):  |
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| 2<br>3<br>4  | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE  | 2<br>3<br>4  | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE BY: MARISA SZELAG, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 rwalters@kirkland.com |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE BY: MARISA SZELAG, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com  | 2<br>3<br>4<br>5<br>6<br>7   | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218                       |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE BY: MARISA SZELAG, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com Representing the Dey Companies  KIRKLAND & ELLIS, LLP BY: ERIC GORTNER, ESQUIRE  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 rwalters@kirkland.com |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE BY: MARISA SZELAG, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com Representing the Dey Companies  KIRKLAND & ELLIS, LLP BY: ERIC GORTNER, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 861-2285 egortner@kirkland.com Representing Roxane Laboratories and | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18             | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 rwalters@kirkland.com |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | APPEARANCES (Continued):  KELLEY, DRYE & WARREN, LLP BY: NEIL MERKL, ESQUIRE BY: MARISA SZELAG, ESQUIRE 101 Park Avenue New York, New York 10178 Phone: (212) 808-7811 nmerkl@kelleydrye.com Representing the Dey Companies  KIRKLAND & ELLIS, LLP BY: ERIC GORTNER, ESQUIRE 200 East Randolph Drive Chicago, Illinois 60601 Phone: (312) 861-2285 egortner@kirkland.com Representing Roxane Laboratories and | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | APPEARANCES (Continued):  KIRKLAND & ELLIS, LLP BY: RAYNA S. WALTERS, ESQUIRE 655 Fifteenth Street, NW Washington, DC 20005-5793 Phone: (202) 879-5218 rwalters@kirkland.com |

|          | Page 298   |          | Page 300   |
|----------|--|----------|--|
| 1        | TELEPHONIC APPEARANCES:                                  | 1        | TELEPHONIC APPEARANCES (Continued):                |
| 2        |  | 2        |  |
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|          | Page 299   |          | Page 301   |
| 1        | TELEPHONIC APPEARANCES (Continued):                      | 1        | TELEPHONIC APPEARANCES (Continued):                |
| 2        |  | 2        |  |
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| 19       | Representing Bristol-Myers Squibb                        | 19       |  |
| 20       |  | 20       | John M. Lockwood, M.D.                             |
|          | Company  |          |  |
| 21 22    | Company  | 21<br>22 | VEN-A-CARE OF THE FLORIDA KEYS                     |

|  |   |   | 1  |   |
|--|---|---|--|---|
|  |   | Page 302  |  | Page 304  |
| 1  | INDEX   |   | 1  | THE VIDEOGRAPHER: Good morning. Here  |
| 2  |   |   | 2  | starts Tape No. 6 in the continued deposition   |
| 3  |   |   | 3  | videotape deposition of Robert Vito taken by the  |
| 4  | ROBERT VITO, VOL. II  |   | 4  | defendant party in the matter of In Re:   |
| 5  |   | AGE   | 5  | Pharmaceutical Industry Average Wholesale Price   |
| 6  | BY MR. TORBORG  | 304   | 6  | Litigation.   |
| 7  |   |   | 7  | The date is June 20th, 2007, and this   |
| 8  |   |   | 8  | deposition is being held at Morgan, Lewis &   |
| 9  | EXHIBITS  |   | 9  | Bockius, 1701 Market Street, in Philadelphia,   |
| 10   |   |   | 10   | Pennsylvania. The time on the monitor is 8:43 a.m.  |
| 11   | NUMBER DESCRIPTION  | PAGE  | 11   | My name is Michael Hunterton, and I am the  |
| 12   | Exhibit Abbott 237 HHD050-1266 - 12   |   | 12   | certified videographer, the court reporter today is   |
| 13   | Exhibit Abbott 237 HHD030-1200 - 12   |   |  | •   |
|  |   |   | 13   | Kathleen Muino; both associated with Henderson  |
| 14   | Exhibit Abbott 239 HHD062-0642  | 339   | 14   | Legal Services of Washington, DC.   |
| 15   | Exhibit Abbott 240 42 CFR Ch. IV (10  | =   | 15   | <br>EVAMINATION   |
| 16   | Exhibit Abbott 241 HHD042-0066 - 00   |   | 16   | EXAMINATION   |
| 17   | Exhibit Abbott 242 HHD052-0914 - 0  |   | 17   |   |
| 18   | Exhibit Abbott 243 HHD052-0919 - 0  |   | 18   | BY MR. TORBORG:   |
| 19   | Exhibit Abbott 244 HHD042-0285  | 383   | 19   | Q. Welcome back, Mr. Vito.  |
| 20   | Exhibit Abbott 245 HHD050-1262  | 390   | 20   | A. Thank you.   |
| 21   |   |   | 21   | Q. Yesterday, when we finished up for the   |
| 22   |   |   | 22   | day, I was asking you about Exhibit Abbott 030,   |
|  |   |   |  |   |
|  |   |   |  |   |
|  | EVALUELTO (OV)  | Page 303  |  | Page 305  |
| 1  | EXHIBITS (Continued):   |   | 1  | which is an OIG report titled Suppliers'  |
| 2  | NUMBER DESCRIPTION  | PAGE  | 2  | which is an OIG report titled Suppliers'<br>Acquisition Costs for Albuterol Sulfate.  |
| 2  | NUMBER DESCRIPTION<br>Exhibit Abbott 246 HHD059-0129 - 0  | PAGE<br>1133 464  | 2  | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that  |
| 2<br>3<br>4  | NUMBER DESCRIPTION Exhibit Abbott 246 HHD059-0129 - 0 Exhibit Abbott 247 HHD059-0445  | PAGE<br>1133 464<br>469   | 2<br>3<br>4  | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off  |
| 2<br>3<br>4<br>5   | NUMBER DESCRIPTION Exhibit Abbott 246 HHD059-0129 - 0 Exhibit Abbott 247 HHD059-0445 Exhibit Abbott 248 HHD059-0447   | PAGE<br>1133 464<br>469<br>471  | 2<br>3<br>4<br>5   | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a   |
| 2<br>3<br>4<br>5<br>6  | NUMBER DESCRIPTION Exhibit Abbott 246 HHD059-0129 - 0 Exhibit Abbott 247 HHD059-0445 Exhibit Abbott 248 HHD059-0447 Exhibit Abbott 249 HHD050-1463 - 1  | PAGE<br>133 464<br>469<br>471<br>466 473  | 2<br>3<br>4<br>5<br>6  | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers  |
| 2<br>3<br>4<br>5   | NUMBER DESCRIPTION Exhibit Abbott 246 HHD059-0129 - 0 Exhibit Abbott 247 HHD059-0445 Exhibit Abbott 248 HHD059-0447 Exhibit Abbott 249 HHD050-1463 - 1 Exhibit Abbott 250 HHD059-0001 - 0   | PAGE 464 469 471 466 473 0004 473   | 2<br>3<br>4<br>5   | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a   |
| 2<br>3<br>4<br>5<br>6  | NUMBER DESCRIPTION Exhibit Abbott 246 HHD059-0129 - 0 Exhibit Abbott 247 HHD059-0445 Exhibit Abbott 248 HHD059-0447 Exhibit Abbott 249 HHD050-1463 - 1 Exhibit Abbott 250 HHD059-0001 - 0 Exhibit Abbott 251 HHD062-0288 - 0  | PAGE 464 469 471 466 473 9004 473 1295 511  | 2<br>3<br>4<br>5<br>6  | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8  | NUMBER Exhibit Abbott 246 Exhibit Abbott 247 Exhibit Abbott 247 Exhibit Abbott 248 Exhibit Abbott 249 Exhibit Abbott 249 Exhibit Abbott 250 Exhibit Abbott 251 Exhibit Abbott 252 Exhibit Abbott 252 Exhibit Abbott 253   | PAGE 464 469 471 466 473 9004 473 9295 511 9029 515                                   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers incur in connection with providing albuterol sulfate to Medicare beneficiaries. Correct?   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | NUMBER Exhibit Abbott 246 Exhibit Abbott 247 Exhibit Abbott 248 Exhibit Abbott 248 Exhibit Abbott 249 Exhibit Abbott 249 Exhibit Abbott 250 Exhibit Abbott 251 Exhibit Abbott 252 Exhibit Abbott 252 Exhibit Abbott 252   | PAGE 469 471 466 473 9004 473 9295 511 929 515  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate. And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers incur in connection with providing albuterol sulfate to Medicare beneficiaries. Correct?  A. Yes.  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | NUMBER Exhibit Abbott 246 Exhibit Abbott 247 Exhibit Abbott 247 Exhibit Abbott 248 Exhibit Abbott 249 Exhibit Abbott 249 Exhibit Abbott 250 Exhibit Abbott 251 Exhibit Abbott 251 Exhibit Abbott 252 Exhibit Abbott 253   | PAGE 469 471 466 473 0004 473 1295 511 1029 515 1981 542 1995 547                     | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate.  And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers incur in connection with providing albuterol sulfate to Medicare beneficiaries. Correct?  A. Yes.  Q. At least there's a discussion of those  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | NUMBER Exhibit Abbott 246 Exhibit Abbott 247 Exhibit Abbott 248 Exhibit Abbott 248 Exhibit Abbott 249 Exhibit Abbott 249 Exhibit Abbott 250 Exhibit Abbott 251 Exhibit Abbott 252 Exhibit Abbott 252 Exhibit Abbott 253 Exhibit Abbott 253 Exhibit Abbott 254   | PAGE 464 469 471 466 473 9004 473 9295 511 9029 515 9981 542 9995 547 412 555         | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | which is an OIG report titled Suppliers' Acquisition Costs for Albuterol Sulfate.  And I've asked you to turn to Page 7 of that report, which I believe is where we ended off yesterday; specifically, last paragraph, there's a discussion of some additional costs that suppliers incur in connection with providing albuterol sulfate to Medicare beneficiaries. Correct?  A. Yes.  Q. At least there's a discussion of those additional costs, correct?   |
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